S. HRG. 100-554

AMENDMENTS TO THE MERCHANT MARINE ACT OF 1920

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1988

AMENDMENTS TO THE MERCHANT MARINE ACT OF 1920

JANUARY 28, 1988

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

82-999 O WASHINGTON : 1988

S261-39

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii	JOHN C. DANFORTH, Missouri
WENDELL H. FORD, Kentucky	BOB PACKWOOD, Oregon
DONALD W. RIEGLE, JR., Michigan	NANCY LANDON KASSEBAUM, Kansas
J. JAMES EXON, Nebraska	LARRY PRESSLER, South Dakota
ALBERT GORE, JR., Tennessee	TED STEVENS, Alaska
JOHN D. ROCKEFELLER IV, West Virginia	ROBERT W. KASTEN, JR., Wisconsin
LLOYD BENTSEN, Texas	PAUL S. TRIBLE, JR., Virginia
JOHN F. KERRY, Massachusetts	PETE WILSON, California
JOHN B. BREAUX, Louisiana	JOHN MCCAIN, Arizona
BROCK ADAMS, Washington	

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON MERCHANT MARINE

JOHN B. BREAUX, Louisiana, *Chairman*

DANIEL K. INOUYE, Hawaii	TED STEVENS, Alaska
LLOYD BENTSEN, Texas	PAUL S. TRIBLE, JR., Virginia
BROCK ADAMS, Washington	

CONTENTS

	Page
Opening statement by Senator Inouye	1
Opening statement by Senator Breaux	2
Opening statement by Senator Stevens	5
Opening statement by the Chairman	6
Opening statement by Senator Bentsen	6
Text of S. 1988	7

LIST OF WITNESSES

Albers, Richard. F, general manager, Standard Marine Services, Inc.; accompanied by Dena Wilson, vice president, legislative affairs, American Waterways Operators	30
Blomberg, Gerard, D., president, B&B Dredging Corp.; accompanied by Don Shafto, counsel	32
Prepared statement	35
Questions of the Chairman and the answers	44
Creelman, William, Deputy Administrator for Great Lakes and Inland Waterways, Maritime Administration, DOT	10
Questions of Senator Inouye and the answers	13
Questions of Senators Danforth, Packwood, and Stevens and the answers	15
Dupont, Kenneth, vice president, Avondale Shipyards, Inc	77
Questions of the Chairman and the answers	78
Questions of Senator Inouye and the answers	79
Questions of Senators Danforth, Packwood, and Stevens and the answers	80
Franklin, James E., vice president and general manager, fabrication and shipyard operations, McDermott Marine Construction	53
Prepared statement	55
Questions of the Chairman and the answers	62
Questions of Senator Inouye and the answers	68
Questions of Senator Danforth and the answers	73
Letter of January 22, 1988	74
Heron, Leon C., Jr., former executive vice president and general manager, Gulf Marine Fabricators, Inc	82
Prepared statement	84
Questions of the Chairman and the answers	86
Questions of Senator Inouye and the answers	87
Questions of Senators Danforth, Packwood, and Stevens and the answers	88
La Fleur, Cedric, mayor, Morgan City, LA; accompanied by Mike Taylor, St. Mary Parish councilman	88
Pecquex, Frank, executive vice president, Seafarers International Union	46
Prepared statement	48
Peterson, Kathryn C., Chief, Carrier Rulings Branch, U.S. Customs Service	16
Prepared statement	18
Questions of the Chairman and the answers	19
Questions of Senator Inouye and the answers	20
Questions of Senators Danforth, Packwood, and Stevens and the answers	20
Stocker, John J., president, Shipbuilders Council of America	90
Prepared statement	92
Questions of Senator Inouye and the answers	94
Questions of Senators Danforth, Packwood, and Stevens and the answers	95
Tanzberger, Eric, president, Bean Dredging Co	32

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

American Petroleum Institute, statement 101
Berger, Leo V., statement 105
Dane, John, III, president, Trinity Marine Group, letter 119
DeFries, C. E., president, National Marine Engineers' Beneficial Assn., letter 113
Fernstrom, H. Allen, president and CEO, American Shipbuilding Co., statement 102
GATX Leasing Corp., statement 103
Gramm, Hon. Phil, U.S. Senator from Texas, statement 101
Klinges, D. H., president, marine construction, Bethlehem Steel Corp., letter 112
Landgrebe, Karl M., District No. 1—Pacific Coast District, MEBA, letter 116
Moomjian, Cary A., Jr., divisional vice president, Santa Fe International Corp., letters 109
National Association of Dredging Contractors, statement 104
Rinard, T. F., president, Louisiana Shipbuilding and Repair Assn., letter 121
Rudman, Gloria C., legislative director, Joint Maritime Congress, letter 123
Schultz, Harvey W., commissioner, New York City Department of Environmental Protection, statement 108
Shell Offshore Inc., satement 107
Stevens, Joe M., Jr., Brown & Root, Inc., letter 110
Temenak, James M., vice president, National Steel and Shipbuilding Co., letter 120

AMENDMENTS TO THE MERCHANT MARINE ACT OF 1920

THURSDAY, JANUARY 28, 1988

U.S. SENATE,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met at 10:00 a.m. in room SR-253, Russell Senate Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: John Hardy and Barry Kalinsky, staff counsels; and Bob Eisenbud, minority professional staff member.

Senator BREAUX. The Subcommittee on Merchant Marine will now come to order.

The subject matter this morning is a hearing on pending legislation.

I would entertain any requests, however, prior to that, for opening statements, from any other members who are here.

The Senator from Oregon.

Senator PACKWOOD. Mr. Chairman, I am not even a member of this subcommittee, but I do have a deep interest in the subjects you are considering today, and I have some very specific questions involving the Jones Act that I would like to submit to various witnesses, and I would actually stay, except that I am going off to the Finance Committee meeting to make a quorum there so we can adopt our budget there.

But I do want the witnesses to understand that this is not just a perfunctory series of questions from my staff but questions that I am personally interested in, and I would appreciate their answers.

Thank you, Mr. Chairman.

Senator BREAUX. Those questions will be made a part of our record, and we will ask the witnesses, of course, to respond to them in a prompt fashion.

The Senator from Hawaii.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. Mr. Chairman, I would like to make a short statement.

I wish to commend my distinguished chairman for proposing to extend the Jones Act which is one of the essential elements in our national effort to create and maintain strong maritime and shipbuilding industries. At a time when our shipbuilding industry is se-

verely depressed and there are no orders for construction of deep sea commercial vessels, the Chairman's effort to extend the Jones Act is especially needed.

That Act is so essential to our national interest that the law specifies only one ground for an administrative waiver of its restriction, and that is appropriate defense-related circumstances.

Congress, of course, may grant legislative waivers, and from time to time has done so by enacting private bills identifying the individual vessels to be given favorable treatment, and setting out narrowly defined terms and conditions, including citizenship requirements.

With this background in mind, I must therefore express some reservations about another provision in the bill which would exempt a class of vessels—in this case foreign-built launch barges—from the Jones Act and make a unique exception to our vessel documentation laws which would narrow the scope of the act, and among the reasons for my concern are the following.

Presently a vessel operating in the Jones Act must have at least 75 percent U.S. stock ownership. However, in S. 1988, foreign-built launch barges operating in the Jones Act trades could have 100 percent foreign stock ownership. This was precisely what so many in Congress objected to when the Administration was negotiating the Free Trade agreement with Canada.

The risk of piecemeal exemptions of a class of vessels from the Jones Act such as the one proposed in this bill will create a precedent for legislative exemptions every time a U.S. industry or class of persons maintains it is adversely affected by operations of the Jones Act.

And finally, a risk that if Congress legislates a Jones Act exemption because it is cheaper to build a ship in a foreign shipyard than it is to build the same ship in a U.S. yard, it will establish a precedent which I believe will render the Jones Act meaningless.

Mr. Chairman, I have long believed that if this foundation of our maritime policy should be changed, that it should be only done after much study and deliberation by the Congress, and I continue to hold that view. And may I assure you of my support in such an effort.

I commend the chairman once again for bringing up this measure to extend the Jones Act.

Thank you very much.

Senator BREAUX. I thank the Senator from Hawaii for his comments.

OPENING STATEMENT BY SENATOR BREAUX

Senator BREAUX. I would like to first thank my distinguished colleague and of course the Chairman of the full committee, Fritz Hollings, the Senator from South Carolina, for scheduling this hearing at my request in such an expedited manner. The Chairman certainly appreciates that this legislation is of a very high priority to me, not only in my capacity of promoting sound maritime policy as the chairman of the subcommittee, but also as a strong proponent of a policy for energy independence for our nation.

I am certainly grateful for the cooperation of the Chairman in this regard.

I also know that the Chairman appreciates that I think no one has been any more staunch than I in defending the various United States maritime promotional policies and programs, in particular, the Jones Act.

As a most recent example, in the first session of this Congress I and several of our colleagues on this committee invested a considerable amount of time and effort and energy in fighting against what we believed was a substantial practical threat to the integrity of the Jones Act. The U.S. trade negotiations with Canada were aimed in part at permitting the Canadian maritime industry to participate in any trade otherwise reserved in the future for U.S. vessels under the Jones Act. Not only was it an unacceptable procedure for the United States Trade Representative to begin a course of negotiating militarily sensitive maritime policies in the context of trade agreements, but the agreement would have had the very practical effect of denying U.S. shipbuilders, U.S. vessel operators and U.S. seamen opportunities presented by the very legislation before us today.

In fact, it was with this legislation in mind that many of us made such an extensive effort to have the transportation annex removed from the U.S.-Canada Free Trade Agreement.

The bill before us this morning represents a pragmatic approach toward providing direct economic benefits to several U.S. maritime interests, including U.S. shipbuilders and fabricators of offshore oil and gas platforms, U.S. barge operators, U.S. dredge operators, U.S. tugboat operators and U.S. maritime labor. The bill before us would clarify congressional intent that the Jones Act, originally drafted in 1920, should apply to the transportation of merchandise, regardless of its value, between points in the United States lying inside the seaward boundary of the United States' Exclusive Economic Zone established by President Reagan in 1983.

This would result in substantial new opportunities for U.S. shipyards to construct sludge barges and dredge vessels, and of course, opportunities for U.S. companies to operate them. Without this legislation, these jobs will be lost to foreign competition.

The bill would protect U.S. tugboat operations and U.S. seamen working in the coastwise trades from intrusions by foreign operators into the towing of sludge and other barges to offshore sites. The bill would also provide U.S. shipbuilders interested in fabricating large offshore drilling platforms the opportunity to compete for these contracts with domestic oil leaseholders.

Currently there are no, and I repeat, no Jones Act qualified launch barge vessels in existence with the capacity to launch the very large, deepwater platform jackets. The U.S. shipyards capable of fabricating such large platform jackets are therefore precluded from even bidding on fabrication contracts with the domestic oil companies for lack of any vessel to transport the finished product from their yards to the installation site far out on the U.S. outer continental shelf.

It should be noted that the dual mode transportation of such deepwater platform jackets from a U.S. port to a point on the U.S. OCS has become subject to the provisions of the Jones Act only re-

cently as a result of an interpretive ruling by the Customs Services in 1984, not by any action on the part of the Congress.

It should be further noted, therefore, that even with the 1984 ruling that specifically reserved the launch barge trade for the U.S. built vessel, no launch barge of sufficient capacity has since been constructed in the United States. It must be concluded, therefore, that there is no demonstratable market for the construction of such launch barges by any U.S. shipyard. This is primarily because the U.S. leaseholders have the authority to contract with foreign shipyards for the fabrication of any deepwater platform which can legally be transported to an OCS installation site on one of the very launch barges that this bill addresses.

Any construction of a U.S. launch barge of this size would be therefore a very expensive and a totally unjustified gamble.

Therefore, this bill would allow U.S. shipyards in the business of fabricating large platform jackets to make use of a fleet of 12 existing foreign-built launch barges insofar as these vessels are willing to reflag to the United States, and insofar as the platform jacket cannot be handled by any of the much smaller launch barges in the U.S. fleet.

If the platform jacket could be handled by an existing U.S.-built smaller launch barge, such a barge would have to be used. As such, the launch barge provisions of this bill would provide a substantial opportunity to bring platform jacket construction opportunities and hundreds of jobs back to U.S. shipyards without compromising any other demonstratable U.S. shipbuilding opportunities or the interests of any U.S. launch barge operators.

I would like to take this opportunity to also point out there has been some confusion over the intent and the scope of the launch barge provision. It is our clear intent that only those foreign-built launch barges with a capacity to carry and to launch platform jackets in excess of 12,000 long tons be covered by this legislation. I would think that this was an obvious intent, but I wanted to clarify it for the record.

I have also learned that since the introduction of the legislation, the one launch barge that was under construction, and that was intended to be covered by the legislation, has now been completed and is being delivered. Therefore, I think it would be appropriate in our later deliberations to make the necessary changes to the bill that will restrict the grandfather provision just to those 12 existing and fully constructed launch barges that have been identified by Marad.

I am not unaware that any tinkering with the Jones Act causes anxiety among many in the maritime community. Some have argued in the past, and some will argue today, that we must be absolute in our preservation of the application of the Jones Act, regardless of the economic consequences. This is, I believe, a shortsighted and almost paranoid perspective of the fundamentalists, and one that will ultimately do more harm than good to the interests of the maritime community as a whole.

We must be pragmatic in our approach to maritime policy and analyze each opportunity as it presents itself. If we expect to put this industry back on its feet, as I would like to help do, we must start measuring the benefits and the detriments of proposals in

real economic terms, not in perceived notions of philosophical purity.

As I have stated earlier, my staunch defense of the Jones Act to date has been in tangible but not philosophical terms. I would hope to see the entire maritime community embrace this point. Further to this point, it has been suggested by some that the launch barge provision is analogous to previous proposals that were otherwise found by Congress and by the maritime community to be unacceptable intrusions into the Jones Act. The Cunard passenger ship reflagging proposal made a few years ago is a popular analogy, but it is not a valid one.

In the Cunard case, there was a demonstratable market for the construction of passenger ships in U.S. shipyards, and there was a demonstratable growth potential for the domestic passenger ship industry. In other words, the Cunard vessels would have directly displaced economic opportunities for domestic maritime interests. There is no such demonstratable market for U.S. built launch barges, nor would this provision displace any existing or anticipated domestic economic opportunity.

Other analogies such as those regarding the transportation of steel from South Carolina to California or the transportation of wood products along the West Coast all involved situations where there were available domestic transportation alternatives to the foreign transportation. This is obviously not the case with deepwater platform jackets. There are simply no domestic transportation options for U.S. fabricated deepwater platform jackets. The only current option is to fabricate deepwater jackets in foreign shipyards, and I do not want that to happen.

Again, I think this is a very important bill in many respects and hope that it will be viewed on balance.

I appreciate all of our witnesses who will be here this morning, and the Members, and recognize the distinguished Senator from Alaska.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. I still do not have my voice today, and I have another conflict.

I did want to be here to put on the record that there have been some suggestions that we might try to add some restrictions to deal with either the Alaska or Hawaii situations and to raise them in connection with your bill. I think you have made your case, and it is a very good one, and I see no reason for us to complicate this issue in any way with regard to the goal you seek to achieve with this bill.

I just want to put it on the record here now that we do not intend to in any way offer amendments or to try and broaden the coverage of this bill.

Having said that, though, I would like to have your agreement that I might submit to the witnesses, even though I am not going to be here, some questions for the record to develop some statistics about other areas, with the full understanding that, as I have stated on the record, that we have no intention to develop this. But there are some other interests that have approached us.

You have already mentioned the timber industry, for instance, and I think it would be best to get both sides of that on the record of a hearing, and if I may submit those for the record, I would appreciate that.

Senator BREAUX. Absolutely, and those questions will be answered by the witnesses in a timely fashion.

I have statements from Senators Hollings and Bentsen that I will include in the record along with the bill.

[The statements and bill follow:]

OPENING STATEMENT BY THE CHAIRMAN

Mr. Chairman, I wish to commend you, for scheduling a hearing so promptly on these important issues. In my opinion, these matters deserve a hearing and I look forward to receiving testimony from our expert witnesses.

S. 1988 modifies the application of the Jones Act with respect to sewage sludge barges, launch barges, towing vessels, and dredging vessels. The Jones Act reserves our domestic waterborne commerce exclusively for vessels built in the United States and operated under United States flag registry. Although the Act in its present form was enacted in 1920, it has its roots in the cabotage laws first adopted in 1789 and thus has been the cornerstone of our national maritime policy from the beginning.

As recently as this past Monday, the Commission on Merchant Marine and Defense, in its second report to the President, reaffirmed support for the Jones Act by recommendng continued preservation, enforcement, and strengthening of our current cabotage laws. Furthermore, the Commission found that the costs of the cabotage laws are reasonable in comparison with the economic security that they provide to our domestic trade, and that the laws contribute significantly to providing the maritime resources needed to meet our national defense requirements.

It is obvious the Jones Act plays an important role in many facets of our national interest. Therefore the Congress must carefully review each and every proposed modification to the Jones Act.

OPENING STATEMENT BY SENATOR BENTSEN

Mr. Chairman, I regret that I cannot attend this hearing because of a simultaneous meeting of the Finance Committee. But I wanted to make clear my support for the pending legislation, S. 1988.

I am particularly supportive of prompt and favorable action by the Commerce Committee on the so-called launch barge provisions of this bill.

We need to act in order to keep Texas and Louisiana companies from losing jobs to foreigners. More than 1,000 jobs in Texas are immediately at stake and the industry says it will lose at least $75 million a year in business unless the law is changed.

Unless we change the law, Gulf Coast companies will be excluded even from bidding on future offshore oil platforms becuase they will be unable to guarantee legal delivery of the rigs they build.

The current situation is a catch-22 and it makes no sense. As Customs interprets the law, it's OK for a foreign firm to build a drilling rig and haul it to a drilling site from a foreign port, but a U.S. firm cannot build a rig and haul it to a drilling site on a foreign built rig from a U.S. port, even though no U.S. company makes the barges.

I hope that this hearing will build a record that can persuade our colleagues of the urgent need to pass this legislation and end this ridiculous situation. By making a quite limited exemption to the Jones Act restrictions on the use of foreign-built vessels, we would in fact save American jobs and increase competition.

Mr. Chairman, I congratulate you on sponsoring this much-needed legislation and on holding this hearing so that the full spectrum of opinion can be aired. I also hope that we will be able to proceed to rapid enactment of this bill.

100TH CONGRESS
1ST SESSION

S. 1988

Amendments to the Merchant Marine Act of 1920.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21 (legislative day, DECEMBER 15), 1987

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

Amendments to the Merchant Marine Act of 1920.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) is amended—

(1) in the first sentence—

(A) by striking "Treasury" and inserting "Treasury, or, in the case of valueless material, the actual cost of the transportation"; and

(B) by striking the colon; inserting a period, and adding "For purposes of this section, 'merchandise' includes valueless material."; and

(2) at the end, by striking the period, inserting a colon, and adding the following: *"Provided further*, That this section applies to the transportation of valueless material, and any dredged material regardless of whether it has commercial value, from a point or place in the United States, or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or, to a point or place on the high seas within that Exclusive Economic Zone: *Provided further*, That the transportation of any platform jacket in or on a launch barge shall not be deemed transportation subject to this section if the launch barge has a carrying capacity of twelve thousand long tons or more, was built or under construction as of the date of enactment of this proviso, and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a barge of lesser capacity."

SEC. 2. Section 4370(a) of the Revised Statutes of the United States (46 App. U.S.C. 316(a)) is amended by inserting at the end the following:

"This section applies to the towing of a vessel transporting valueless material, and any dredged material, regardless of whether it has commercial value, from a point or place

in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone".

SEC. 3. A vessel may transport municipal sewage sludge to a deepwater disposal site designated by the Administrator of the Environmental Protection Agency under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401–1444) if that vessel is documented under the laws of the United States and that vessel—

(1) is under construction for use by a municipality for the transportation of sewage sludge on the date of enactment of this Act; or

(2) is under contract with a municipality for the transportation of sewage sludge on the date of enactment of this Act.

SEC. 4. For purposes of the first paragraph of section 805(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1233(a)), a vessel described in section 3(2) of this Act is not a vessel engaged in domestic intercoastal or coastwise service, but the prohibitions in the second paragraph apply to that vessel.

SEC. 5. Notwithstanding another law, the Secretary of the department in which the Coast Guard is operating may

issue a certificate of documentation under section 12106 of title 46, United States Code, endorsed to restrict the use of a vessel to which such a certificate is issued to the transportation of valueless material in the coastwise trade, to a vessel that—

(1) is engaged in transporting only valueless material in the coastwise trade;

(2) had a certificate of documentation issued under section 12105 of that title on October 1, 1987;

(3) had been sold foreign or placed under a foreign registry before that certificate was issued; and

(4) was built in the United States.

○

Senator BREAUX. We also have a statement from Senator Gramm and some industry statements which will also be made a part of the record.

I would like to welcome up our first panel consisting of Mr. Creelman, who is Deputy Administrator for Great Lakes and Inland Waterways, representing MarAd; and Ms. Kathryn Peterson, who is Chief, Carrier Rulings Branch of the U.S. Customs Service.

We welcome both of you. If you would take your place at the witness table, we would be pleased to receive your testimony.

Without objection, all Senators will have an opportunity to submit questions also.

Mr. Creelman, on behalf of MarAd.

STATEMENT OF WILLIAM CREELMAN, DEPUTY ADMINISTRATOR FOR GREAT LAKES AND INLAND WATERWAYS, MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. CREELMAN. Good morning, Mr. Chairman, and members of the Subcommittee on Merchant Marine. My name is William Creelman. I am the Deputy Maritime Administrator for Inland Waterways and Great Lakes of the Department of Transportation.

It is a pleasure for me to appear before the subcommittee this morning to present the views of the administration with respect to S. 1988.

Mr. Chairman, S. 1988 is Jones Act legislation, and the administration has consistently supported the Jones Act. The Jones Act is set forth in Section 27 of the Merchant Marine Act, 1920, as amended, and provides in part that no merchandise shall be transported by water between points in the United States within the coastwise laws in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States.

The genesis of the legislation before the subcommittee this morning would appear to be a proposal by the City of New York to use four foreign-built barges to transport sewage sludge for disposal 106 miles off the coast. The U.S. Customs Service had ruled that such transportation does not come within the scope of the Jones Act and may be performed in foreign-built barges because worthless material is not merchandise within the meaning of that act, and the proposed transportation would not be between coastwise points.

In response to this situation, legislation was introduced in the House, H.R. 82, to amend the Jones Act by the addition of a proviso clause stating that this section applies to the transportation of municipal sewage sludge from a point in the United States to a point on the high seas within the Exclusive Economic Zone as defined in the presidential proclamation of March 10, 1983. The Subcommittee on Merchant Marine of the House Merchant Marine and Fisheries Committee held a hearing on this legislation on April 23 last year. I appeared at that hearing.

In presenting the views on behalf of the Department, I stated that, and I quote, "The principle that a nation's own ships should carry its coastal trade, presently embodied in the Jones Act, has been part of this country's maritime policies since the early days of the nation. In recent years, the safe and environmentally sound disposal of waste has become a national problem, and a trade has developed in the ocean transportation of sewage sludge and other wastes from points in the United States for dumping at sea. These dump sites are off the coast of the United States and within the EEZ. A case can be made that such ocean transportation should be considered coastal trade for the purposes of the Jones Act. Clearly, such vessels are not engaged in the foreign trade, and had this trade been known at the time the Jones Act was drafted, it seems reasonable to assume that it would have been included within the purview of the law."

Subsequently, the administration's position on H.R. 82 was provided to the House in a statement of administration policy dated July 23, 1987, and I quote: "The administration opposes enactment of H.R. 82 because it would require vessels used to transport sewage sludge to be built in the United States, which could impose unnecessary economic burdens on municipalities disposing of sewage sludge within the U.S. Exclusive Economic Zone. The administration opposes any proposal which would appear to extend Jones Act requirements generally to the Exclusive Economic Zone."

To the extent that S. 1988, the bill before the subcommittee this morning, is similar to H.R. 82, the administration cannot support it.

Mr. Chairman, S. 1988 also contains two narrow exceptions to the Jones Act that are proposed because of the reversal of certain U.S. Customs Service rulings and the special circumstances of each case. They involve, one, foreign-built launch barges, and two, the U.S. documentation of a U.S.-constructed dredge that had been sold foreign.

In the first section of S. 1988 there is a proviso that would exempt from the Jones Act the transportation of any platform jacket in or on a launch barge if the launch barge has a carrying capacity of 12,000 long tons or more, was built or under construction as of the date of enactment of this proviso, and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a barge of lesser capacity.

Continuing this administration's strong support for the Jones Act and consistent with our September 3, 1987 comments on the petition to modify Customs Decision 85-09, the Department recognizes the unique circumstances surrounding this issue. There are no U.S.-built launch barges large enough to service projected deepwater oil and gas production in the Gulf of Mexico. Existing foreign-built barges would have been available under Customs rulings prior to 1985, and therefore, as a matter of equity, it is appropriate to treat them as a special class.

Furthermore, U.S. yards may be precluded from bidding on imminent projects to build platform jackets unless they can certify that they have a qualified vessel capable of delivering the jacket. Without this provision, it is possible, even likely, that jacket fabrication will go foreign, artificially reducing employment prospects for U.S. shipyards. It is ironic that such jackets would be delivered by the same foreign built barges that are the subject of this section since it would be transportation from a foreign building site to the U.S. Outer Continental Shelf.

Because of these unique circumstances, we would not object to a very limited exception from the build U.S. requirement of the Jones Act for existing foreign-built launch barges with a launch capacity equal to or greater than 12,000 long tons.

And in that connection, I would like to point out the difference, or highlight that there is a difference between launch capacity and carrying capacity, and as written—as I read the bill as drafted—that point is not clear. I think, Mr. Chairman, you referred to that in your own comments. So with launch capacity as our perspective, it is to be equal to or greater than 12,000 long tons. And we recognize that launch capacity is not a number that can be found in any handbook, it is not listed consistently for these barges anyplace that we have been able to find. It is a number that has a good deal to do with not only the barge itself, but what is being carried on the barge, and its weight distribution and its dimensions.

So we would emphasize again, we are talking about launch capacity equal to or greater than 12,000 long tons, provided that, number one, these vessels meet all other requirements of the coastwise laws, including ownership by United States citizens; two, they

are restricted from transporting smaller jackets or jacket components which can be launched from existing qualified vessels; and three, they are precluded from competing with any future fully qualified Jones Act launch barges of equal or greater capacity.

The second narrow exception to the Jones Act is contained in section 5 of the bill, and authorizes the coastwise documentation of the U.S.-built dredge that has defective title for this purpose because it was sold foreign. Such documentation would be restricted to the transportation of valueless material in the coastwise trade.

Again, Mr. Chairman, there appear to be special circumstances regarding the eligibility of this particular vessel for the coastwise trade. The Administration would not object to a restoration of Jones Act privileges for this dredge if Congress approves such action.

The final element of S. 1988 would amend the Jones Act so that it would apply to the transportation of valueless material or dredged material regardless of value from a point or place in the United States or on the high seas within the exclusive economic zone to another such point. Conforming amendments would be made to the Jones Act to clarify that valueless material would be considered merchandise within the meaning of that Act and provision for an appropriate penalty as well.

In order to preclude the anomalous situation of a foreign-flag tug towing U.S. vessels in the trade, section 2 of the bill would amend section 4370(a) of the Revised Statutes to require U.S.-flag tugs for this purpose. As previously stated, the Administration opposes legislation which would appear to extend Jones Act requirements generally to the EEZ. We would want to look at any other transportation issues in the EEZ on a case-by-case basis. We want to be sure that the interests of American contractors in the offshore zones of other countries are preserved.

Mr. Chairman, that concludes my prepared statement, and I will be pleased to answer any questions that you or any other members of the subcommittee may have.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question 1. Since the market for super launch barges is so limited, those barges seek work all over the world. For example, one of the foreign-owned launch barges which could be re-flagged U.S. is now on the North Sea, according to MARAD.

Would a foreign-owned launch barge which was re-flagged U.S. be eligible for Title XI federal mortgage loan guarantees; War Risk Insurance?

Answer. A foreign-owned launch barge which was re-flagged U.S. would not be eligible for Title XI loan guarantees; it would, however, be eligible for Title XII War Risk Insurance.

Question 2. Since the market for super launch barges is so limited, those barges seek work all over the world. For example, one of the foreign-owned launch barges which could be reflagged United States is now on the North Sea, according to MARAD.

Since it would be a U.S.-flag barge, would it be entitled to the protection of the U.S. Navy if it were being used in Libya?

Answer. The U.S. Navy is available to support U.S. interests around the world. Protection of U.S.-flag merchant shipping is among its many responsibilities. Determinations of specific deployments of naval forces are made, considering the threat, U.S. security needs, and overall policy objectives by the Departments of Defense and State.

Question 3. As near as the Subcommittee staff has been able to ascertain, no oil producer currently has need for the construction and installation of a platform jacket of 30,000–60,000 long tons on the Outer Continental Shelf.

You may recall that in 1982, Exxon applied for a waiver of the Jones Act to enable it to move a platform jacket in our domestic trades on a foreign built launch barge.

In opposing Exxon's application MARAD said that:

Even though there is presently no U.S.-flag, U.S.-build barge suitable for the desired transportation, if at the time Exxon was formualting its plans for the Lena Tower, it contracted for the construction of the necessary barge, Exxon could have had a suitable U.S.-built barge available.

Similarly, with adequate notice, couldn't a U.S.-yard build a launch barge when and if an oil producer has need of one?

Answer. It is unlikely that a launch barge will be built in the United States, because market conditions in 1988 are vastly different from what they were in 1982. Under the present economic conditions, there are no incentives for oil producers to build a launch barge in the United States. The oil producer can simply contract for the construction of the jacket in a foreign fabrication yard and transport it to the location on the Outer Continental Shelf utilizing a foreign-flag launch barge. Given the current highly competitive nature of the fabrication industry, it does not appear likely that the economics would support new construction of a U.S.-built launch barge. Moreover, proponents of this legislation have stated that developers could go foreign for platform fabrication in the current market.

Question 4. Proponents of the launch barge provision have said that enactment will "ensure that there will be no need for any further U.S. launch barge construction until well into the twenty-first century."

If this statement is accurate, wouldn't enactment of S. 1988 amount to foreclosing this segment of shipbuilding business from U.S. yards?

Answer: The enactment of S. 1988 could potentially limit the need for the construction of a U.S.-built launch barge with launch capacities exceeding 12,000 tons. This would have a minimal impact on the shipbuilding industry compared to the loss of approximately $2.3–$3.1 billion in potential market for the U.S. fabricators of jackets and offshore platforms. This represents the projected 60–75 structures that may be required to be build over the next 5 years in water depths exceeding 600'. Enactment of S. 1988 would assure that U.S. fabricators will be able to compete against foreign fabricators for the construction of these projects.

The enactment of S. 1988, as it presently is written, would not preclude private U.S. initiatives to construct and operate launch barges if the language contained in the launch barge proviso were clarified to reflect certain limitations on exemptions. These limitations include: (1) that the exempted vessels meet all other requirements of the coastwise laws, including ownership by U.S. citizens; (2) that they are restricted from transporting smaller jackets or jacket components which can be launched from existing qualified vessels, and (3) that they are precluded from competing with any future fully qualified Jones Act launch barges of equal or greater capacity.

If the law were to preclude foreign-built launch barges from competing with future fully qualified Jones Act launch barges, it would not adversely affect U.S. initiative for construction.

Question 5. The statement on the part of the managers of the Continuing Resolution (H.J. Res. 395) enacted last month states that the managers will request the Office of Technology Assessment (OTA) to report to Congress on a series of issues relating to oil exploration and development on the Outer Continental Shelf, including:

The extent to which the importation of rigs, platforms, vessels, or components thereof contribute to the loss of jobs in the United States.

Since the issues involved in the launch barge provision will be investigated by OTA, wouldn't it be better to await OTA's report before exempting a class of launch barges from the Jones Act?

Answer. Presumably the concern of the Congress in asking for this study was to assess the negative impacts from importing these structures. It is hard to imagine that Congress intended that no action should be taken during the interim, if the facts of a situation justify legislative action.

As we understand the nature of the launch barge situation, it is highly unlikely that launch barges of 12,000 long tons capacity will be constructed in the United States in the near future. If nothing is expected to be built, no jobs would be lost. Therefore, we see no need to delay for the OTA study.

QUESTION OF SENATORS DANFORTH, PACKWOOD, AND STEVENS AND THE ANSWERS

Question 1. Please clarify MARAD's rationale for supporting a limited exemption granting foreign-built launch barges coastwise trade privileges under the Jones Act. Does MARAD believe that an exemption should be granted for a limited number of foreign-built, but U.S.-owned and crewed vessels if: (1) Jones Act vessels are not exploiting a market for cabotage; (2) there is no prospect of Jones Act vessels entering that trade so as to meet the demand for transport in that segment of the coastwise trade; (3) substantial economic loss results from the unavailability of vessels to transport the product in the coastwise trade; (4) alternative modes of transportation are not available to meet the logistical and economic needs of that market for timely delivery of a competitively priced product; (5) the work and products in that segment of the economy are lost to foreign competitors as a result of the above factors; (6) exempting a limited number of vessels to meet that market demand would likely result in more, rather than less, jobs in maritime-related and other segments of the economy; and (7) the exempted vessels are precluded from competing with any future fully qualified Jones Act vessels that seek to engage in that trade?

Answer. As explained in my testimony, MARAD would not object to a very limited exemption from the U.S. built requirements of the Jones Act for existing foreign-built launch barges with a launch capacity equal to or greater than 12 thousand long tons, provided that: (1) these vessels meet all other requirements of the coastwise laws, including ownership by United States citizens; (2) they are restricted from transporting smaller jackets or jacket components which can be launched from existing qualified vessels; and (3) they are precluded from competing with any future fully qualified Jones Act launch barges of equal or greater capacity.

In keeping with the Administration's strong support of the Jones Act, we would not support the general application of the seven listed provisions to other types of domestic waterborne service. Several of the provisions are highly subjective, likely to lead to conflicts in interpretation, and would not be appropriate for use as standards in determining whether exemptions to the Jones Act should be granted for other types of service. While recognizing that partial and temporary relaxation may be appropriate in certain circumstances, we believe that Jones Act exemptions should result only from a careful review on a case-by-case basis rather than from the broad application of a set of general criteria.

Question 2. You state on page 5 that MARAD would not object to a very limited exemption for existing foreign-built launch barges with a launch capacity equal to or greater than 12,000 long tons. Given the apparent difficulties associated with determining the launch capacity of a vessel, should the legislation specify the eligible vesels by name, designate MARAD or another agency to make the determinations, or provide some other mechanism for doing so?

Answer. We believe that it is possible to treat the vessels as a class, meeting certain criteria, rather than to name them in the legislation. It would be acceptable to the Maritime Administration (MARAD) for an approved, independent firm of naval architects to make the necessary determination of launch capacity. Alternatively, it can be accomplished directly by MARAD technical staff, or that staff can review and validate determinations made by the vessel owners. In any case, all expensese connected with the determinations and/or review should be borne by the vessel owner.

Question 3. Please clarify your statement on page 4 that "existing foreign-built launch barges would have been available under Customs rulings prior to 1985. . . ." Is it not the case that Customs rulings prior to CD 85–09 allowed use of foreign-built barges in "dual-mode" launching but did not allow true "point-to-point" transport and launching? If this was the situation, does S. 1988 give such foreign-built launch barges the opportunity to be used in point-to-point trade which had not been previously permitted? If so, what is MARAD's position on the grant of such additional authority to engage in coastwise trade?

Answer. Prior to ruling in C.S.D. 85–9, the Customs Service interpreted the Jones Act (46 App. U.S.C. 883) so as to permit the use of foreign-built launch barges to transport platform jackets from U.S. fabrication yards to an offshore launch site not considered to be a coastwise point site by virtue of the Outer Continental Shelf Lands Act (OCSLA). After launching, the jackets were towed to the installation site by coastwise qualified vessels (if determined to be a "coastwise point"). In practice, this tow, which created the permissible "dual-mode" movement, could have been (and often was) simply a matter of positioning the jacket over the installation site, where it was then installed by flooding techniques and secured by piles. In a situation where a jacket is launched precisely at the installation site and no towing occurs, coastwise transportation occurs assuming that there is an installation, or

device attached to the seabed at the installation, within the meaning of the OCSLA. S. 1988 would authorize, in certain instances, transportation of jackets directly to installation sites.

As explained in my testimony, MARAD would not object to a very limited exemption from the U.S. built requirements of the Jones Act for existing foreign-built launch barges with a launch capacity equal to or greater than 12 thousand long tons, provided that: 1) these vessels meet all other requirements of the coastwise laws, including ownership by United States citizens; 2) they are restricted from transporting smaller jackets or jacket components which can be launched from existing qualified vessels; and 3) they are precluded from competing with any future fully qualified Jones Act launch barges of equal or greater capacity.

Question 4. Please explain your reasons for suggesting that the legislation require that exempted foreign-built launch barges be owned by U.S. citizens. What difference does it make with respect to securing the goals and objectives of U.S. maritime policy or other national interests?

Answer. The Administration continues to support the Jones Act. Due to unique circumstances with regard to launch barges, we do not object to a very limited exemption from the "U.S. built" requirement of the Jones Act for existing foreign-built launch barges with a capacity of at least 12,000 long tons. However, we are opposed to any further departure from provisions of the Jones Act. U.S. citizen ownership of a vessel provides assurance that the vessel will be readily available to this country in time of war or national emergency, that corporate tax revenue from its operation will flow to the U.S. Treasury, and that any profits will accrue to U.S. citizen stockholders.

Question 5. The testimony of Mr. Blomberg indicated that 64 percent of the company owning the dredge, COLUMBUS, is owned by citizens of the Netherlands. Would you recommend that the legislation exempting it from the chain of title requirements of the Jones Act require that ownership of the vessel also comply with the 75 percent U.S. citizen ownership requirement of the Jones Act?

Answer. If Congress wants an exemption for the COLUMBUS to the Jones Act ownership requirements, it should include a specific exemption in the legislation, because we are not prepared to relax the 75 percent U.S. citizen ownership requirement of the Jones Act.

Senator BREAUX. Thank you. We will have some questions, however Ms. Peterson, we would like to have your statement first.

STATEMENT OF KATHRYN C. PETERSON, CHIEF, CARRIER RULINGS BRANCH, U.S. CUSTOMS SERVICE

Ms. PETERSON. Good morning, Mr. Chairman. I am Kathryn Peterson, Chief of the Carrier Rulings Branch of the U.S. Customs Service. I would like to submit the prepared testimony that we have and limit my remarks considerably this morning.

I am pleased to offer the observations of the U.S. Customs Service at this hearing since we are the agency charged with enforcing these provisions, and defer to the Department of Transportation for the position of the Administration on the bill.

My branch is in the Office of Regulations and Rulings at Customs, and that office is charged with the responsibility of interpreting and issuing rulings and decisions under the laws and regulation administered and enforced by the Customs Service. And among those of course are the navigation laws, including the so-called coastwise laws.

Inasmuch as Mr. Creelman has gone through the bill, I will leave that for our written testimony. The Customs Service takes no position on the merits. We do have some technical comments however.

We would like to point out that one effect of S. 1988 would be that the coastwise laws would be made more restrictive with regard to the transportation of valueless material and dredged material than with regard to merchandise with value.

Coastwise laws are now applicable to the transportation of merchandise between points in the United States, but not between points on the EEZ or between a point in the United States and a point on the EEZ, except when the coastwise laws are made applicable to artificial islands and installations or other devices attached to the seabed of the OCS.

The bill would make the coastwise laws applicable to the transportation of valueless material and dredged material between points in the United States, between points on the EEZ or between a point in the United States and a point on the EEZ.

I would also like to point out that by making the Jones Act and the coastwise towing statute applicable to the transportation of dredged material from a point in the United States or a point in the EEZ to another point in the United States or a point in the EEZ, S. 1988 would in effect change the current application of the coastwise laws, as we have interpreted those laws, to certain outer continental shelf operations.

Under our current interpretation of the coastwise laws and the Outer Continental Shelf Lands Act, as amended, the transportation of dredged material from a point in the United States or a point on the United States OCS, which usually would be a point in the EEZ, to another point on the OCS for the purpose of constructing an artificial island for resource exploration, exploitation or development, does not become subject to the coastwise laws until a part of the incipient artificial island is above mean high water level.

Under S. 1988 such transportation of dredged material would be prohibited to non-coastwise-qualified vessels. I would suggest that if S. 1988 is enacted, the grandfather clause relating to the transportation of municipal sewer sludge, section 3 of the bill, be clarified. As drafted, the clause permits a vessel to transport municipal sewage to a deepwater disposal site if that vessel is documented and under construction for the specified use on the date of enactment.

Although we defer to the Coast Guard in this matter, we believe vessels under construction may not be documented, and under its current form S. 1988 could be interpreted not to include vessels which are in the process of being constructed because they could not be documented.

Finally, I would like to note that the Customs Service does not have the expertise for making the technical determination necessary under the launch barge provision of S. 1988. That provision requires technical determinations as to the carrying capacity of the launch barge or its launch capacity and whether or not the jacket can be transported on and launched from a barge with a carrying capacity of less than 12,000 long tons. The Customs Service would have to rely on another agency for those technical determinations, and we would of course rely upon the Department of Transportation.

Thank you for allowing me to testify today, and I would be happy to answer any questions.

[The statement and questions and answers follow:]

STATEMENT OF KATHRYN C. PETERSON, CHIEF, CARRIER RULINGS BRANCH, U.S. CUSTOMS SERVICE

Good morning. I am Kathryn Peterson, Chief of the Carrier Rulings Branch of the U.S. Customs Service. In response to your request of January 14, 1988, the Commissioner of Customs has asked me to serve as his representative in testifying on S. 1988, "Amendments to the Merchant Marine Act of 1920." I understand the Department of Transportation will be presenting the over-all position of the Administration. I am pleased to offer the observations of the Customs Service at your hearing on this subject.

The U.S. Customs Service, an agency within the Department of the Treasury, was established by the fifth act of the first Congress, passed on July 31, 1789. It is the primary border enforcement agency and a major collector of revenue. In addition to administering and enforcing the Tariff Act of 1930 and other Customs laws and hundreds of laws and regulations of some 40 other Federal agencies governing international traffic and trade, the Customs Service also administers and enforces many provisions of the navigation laws of the United States. The statutory responsibilities of the Customs Service include the control, regulation, and facilitation of the movement of carriers between the United States and foreign nations and certain carrier movements between points in the United States.

My Branch is in the Office of Regulations and Rulings which is charged with the responsibility of interpreting and issuing rulings and decisions under the laws and regulations administered and enforced by the Customs Service. In addition to other subjects, my Branch is responsible for issuing rulings and decisions under the navigation laws, including the so-called "coastwise laws."

S. 1988, about which you requested testimony, would amend section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883, often called the Jones Act). That statute now prohibits the transportation of merchandise by water, or by land and water, between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vesel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. The statute has had many provisos added over the years.

S. 1988 would also amend section 4370(a) of the Revised Statutes of the United States (46 App. U.S.C. 316(a)). That statute, sometimes called the coastwise towing statute, now prohibits the towing of any vessel other than a vessel in distress by a non-coastwise-qualified vessel (described in the Jones Act) between ports or places embraced within the coastwise laws, either directly or by way of a foreign port or place, or for any part of such towing.

S. 1988 would make the Jones Act applicable to the transportation of valueless material, and any dredged material regardless of whether it has commercial value, from a point or place in the United States, or a point or place on the high seas within the United States Exclusive Economic Zone (EEZ) as defined in Presidential Proclamation 5030, dated March 10, 1983, to another point or place in the United States, or to a point on the high seas within the EEZ. As defined in the Presidential Proclamation, the EEZ extends outward 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured. Conforming with this change, the penalty for violation of the Jones Act would be expanded so that the penalty for the violative transportation of valueless mateiral would be the actual cost of transportation of the valueless material. A specific statement that "merchandise" includes valueless material, for purposes of the Jones Act, would be added to the Jones Act.

Consistent with these changes to the Jones Act, S. 1988 would make the coastwise towing statute applicable to the towing of a vessel transporting valueless material, and any dredged material, regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the EEZ to another point or place in the United States or a point or place on the high seas within the EEZ.

S. 1988 includes a "grandfather" clause under which a vessel would be permitted to transport municipal sewage sludge to a deepwater disposal site designated by the Environmental Protection Agency if the vessel is documented and is under construction for use by a municipality for the transportation of sewage sludge on the date of enactment of S. 1988 or is under contract with a municipality for the transportation of sewage sludge on the date of enactment.

In addition to expanding the coverage of the Jones Act with regard to the transportation of valueless material, and any dredged material regardless of whether it has commercial value, S. 1988 would exempt from the prohibitions of the coastwise laws the transportation on certain launch barges of large platform jackets. A launch

barge with a carrying capacity of 12,000 long tons or more which was built or under construction as of the date of enactment of S. 1988 and was documented under the laws of the United States could be used to transport a platform jacket which could not be transported on and launched from a barge of lesser capacity.

The Customs Service, as an enforcement agency, takes no position on the merits of S. 1988. I do, however, have some technical comments on some of the possible effects of passage of the bill.

I would like to point out that one effect of S. 1988 would be that the coastwise laws would be made more restrictive with regard to the transportation of valueless material and dredged material than with regard to merchandise with value. The coastwise laws now are applicable to the transportation of merchandise between points in the United States *but not* between points on the EEZ or between a point in the United States and a point on the EEZ, except when the coastwise laws are made applicable to artificial islands on, and installations or other devices attached to, the seabed of the OCS, which are erected thereon for the purpose of exploring for, developing, or producing resources from the OCS. The bill would make the coastwise laws applicable to the transportation of valueless material and dredged material between points in the United States *and* between points on the EEZ or between a point in the United States and a point on the EEZ.

I would also like to point out that, by making the Jones Act and the coastwise towing statute applicable to the transportation of dredged material from a point in the United States or a point in the EEZ to another point in the United States or a point in the EEZ, S. 1988 would, in effect, change the current application of the coastwise laws, as we interpret those laws to certain outer continental shelf (OCS) operations. Under our current transportation of the coastwise laws and the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. 1331, *et seq.*) (OCSLA), the transportation of dredged material from a point in the United States or a point on the United States OCS (usually, of course, a point on the OCS would also be a point in the EEZ) to another point on the OCS for the purpose of constructing an artificial island for resource exploration, exploitation or development does not become subject to the coastwise laws until a part of the incipient artificial island is above the mean high water level. Under S. 1988, such transportation of dredged material would be prohibited to non-coastwise-qualified vessels.

I would suggest that, if S. 1988 is enacted, the "grandfather" clause relating to the transportation of municipal sewage sludge (section 3 of the bill) be clarified. This grandfather clause, as it relates to vessels under construction, permits a vessel to transport municipal sewage to a deepwater disposal site if that vessel is documented *and* under construction for the specified use on the date of enactment of S. 1988. Although we defer to the Coast Guard in this regard, we believe that vessels which are under construction may not be documented. S. 1988, in its current form, could be interpreted not to include vessels which are under construction because, although under construction at the time of enactment of the bill, they could not also be documented at the time of enactment of the bill.

Finally, I would like to note that the Customs Service does not have the expertise for making the technical determinations necessary under the launch barge provision of S. 1988. That provision requires technical determinations as to the carrying capacity of a launch barge and whether or not a platform jacket canbe transported on and launched from a barge with a carrying capacity of lesser than 12,000 long tons. The Customs Service would have to rely on another agency for technical advice in making these determinations.

Thank you for allowing me to testify here today. I will be delighted to answer any questions you may have.

Questions of the Chairman and the Answers

Question. Two weeks ago, a U.S District Court held that the transportation of an oil drilling rig on foreign-built barges from a point in the territorial waters of the U.S. to a domestic shipyard for repairs and the return of the rig to the original point, *was a violation of the Jones Act.*

Would S. 1988 legislatively overrule the Court's holding?

Answer. The District Court case to which you refer is *Shipbuilders Council of America, et al. v. United States*, Civil Action No. 87-0972. In an Order dated January 14, 1988, Judge George H. Revercomb of the District Court for the District of Columbia held that the carriage of an oil drilling rig by a foreign-flag barge from a point in the territorial waters of the United States to a point at a United States shipyard where the rig is repaired while remaining on board the barge violates the

Jones Act even though the rig is ultimately unladen at the same point at which it was laden.

The issue in controversy in this case was whether there could be a transportation between coastwise points, within the Jones Act, when merchandise (a drilling rig) was laden onto a barge at one coastwise point and carried to but not unladen at a second coastwise point. Judge Revercomb's decision reversed the administrative interpretation that since there was no unlading at a second coastwise point, there was no transportation in violaton of the Jones Act.

S. 1988 would not legislatively overrule the court's holding. Of course, if S. 1988 is enacted, transportation between coastwise points of a covered platform jacket by a covered launch barge, even if between a coastwise point and a shipyard in the United States, would not violate the Jones Act.

Question. As I understand it, the Jones Act always prohibited direct movement between coastwise points by a foreign-built launch barge carrying a platform jacket; and it was only indirect, dual-mode movement which was permitted *prior* to the Customs Service ruling in 1984.

Is it therefore accurate to say that S. 1988 gives foreign-built barges a right they never before had under the law, i.e., direct movement between two coastwise points?

Answer. That is correct. Our dual-mode movement rule was only applicable to movements between coastwise points of platform jackets and other merchandise in which the merchandise was carried in a vessel for part of the movement and towed for the remainder of the movement. The bill would permit the direct movement of covered platform jackets by covered launch barges, so the bill would permit transportation by such barges which has not been permitted before.

QUESTION OF SENATOR INOUYE AND THE ANSWER

Question. Prior to your 1984 ruling, dual-mode movements were not considered to be prohibited by the Jones Act. After the 1984 ruling, of course, they were. Now, both of these rulings were administrative interpretations which, as was the case here, can be changed by the agency making them.

If S. 1988 is enacted, it will take that discretion away from the Customs Service will it not?

If S. 1988 is enacted, all future launch barges will have to be built in the U.S., won't they?

Answer. Enactment of S. 1988 will only affect our interpretation of the application of section 883, the Jones Act, to certain movements of platform jackets by launch barges and towing. The so-called dual-mode movement rule, however, applies to other articles as well. For example, our 1984 ruling concerned the movement of a drydock in sections from Hawaii to Texas. Enactment of S. 1988 will not affect our interpretation of the application of the dual-mode movement rule insofar as the movement of articles other than platform jackets covered by the bill is concerned.

With regard to the second part of your question, assuming that we do not change our current position with regard to the dual-mode movement rule, we believe your assumption to be correct. If S. 1988 is enacted, future launch barges used to transport platform jackets, or any other merchandise covered by the Jones Act, between coastwise points, including points on the outer continental shelf subject to the laws of the United States by virtue of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. 1331 *et seq.*), will have to be built in the United States.

QUESTIONS OF SENATORS DANFORTH, PACKWOOD, AND STEVENS AND THE ANSWERS

Question. Please clarify the status of current law and the effect of S. 1988 with respect to "valueless" and "valuable" material.

How do you determine that material is "valueless"?

Is all sludge "valueless"?

Has the Customs Service defined "valueless material"?

Do the current requirements of the Jones Act apply to the transport of gravel (taken from a quarry rather than "dredged") or other non-dredged valuable material from a U.S. port to a site in the EEZ for dumping?

Would S. 1988 subject such transport to the Jones Act?

Answer. It is currently the position of the Customs Service that material which has no apparent value and will not be used commercially or in trade (e.g., to create an island or jetty or to otherwise create additional land area) is not "merchandise" within the meaning of the Jones Act. Thus, the transportation of such material be-

tween coastwise points in a non-coastwise-qualified vessel is not prohibited by the Jones Act. This is a position which we in the Customs Service and our predecssor in enforcing the Jones Act, the Bureau of Marine Inspection and Navigation, have consistently followed for at least 50 years. The Courts, in the case of *Great Lakes Dredge & Dock Co. v. Ludwig,* 486 F. Supp 1305 (W.D. New York 1980), and the recent of *106 Mile Transport Associates v. Koch,* 86 Civ. 7190 (JMW) (S.D. New York, March 27, 1987), have upheld this interpretation.

In answer to your specific questions, on the basis of the foregoing:

We would consider material to be "valueless" for purposes of the Jones Act currently and as amended, if S. 1988 is enacted, if the material has no apparent value and will not be used commercially or in trade. In this regard, material to be used to create an island or jetty or to otherwise create additional land area would not be considered "valueless."

Not all sludge would necessarily be considered "valueless." For example, sludge which was being transported to a processor who would use the sludge to make fertilizer, or sludge which was being transported to be used to create an island or jetty or for a similar land fill project, would not be considered "valueless." On the other hand, sludge which was being transported to be dumped, whether at a dumping site in the EEZ or such a site in territorial waters or on land in the United States would be considered "valueless."

As indicated above, it is the position of the Customs Service that material which has no apparent value and will not be used commercially or in trade (e.g., to create an island or jetty or to otherwise create additional land area) is "valueless material," in the context of determining what is "merchandise" for purposes of the Jones Act. I will be pleased to provide you with a copy of our most recently published ruling addressing this issue (Customs Service Decision (C.S.D.) 87-15, published in the October 28, 1987 Customs Bulletin and Decisions, Volume 21, Number 34).

Currently, the Jones Act does not prohibit the transportation in a non-coastwise-qualified vessel of gravel, whether taken from a quarry or dredged, or other valuable material, whether or not dredged, from a United States port to a site in the EEZ *outside territorial waters* for dumping. The only instance in which the the Jones Act would prohibit such transportation is that in which the site in the EEZ was considered a point in the United States by virture of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. 1331, *et seq.*) (OCSLA). Under that statute, of course, all installations and other devices premanently or temporarily attached to the seabed of the outer continental shelf (OCS) for the purposes of exploring for, developing, or producing resources from the OCS are subject to the law of the United States to the same extent as if they were in the United States. That being the case, the transportation from a coastwise point in a non-coastwise-qualified vessel of merchandise such as gravel, whether dredged or not, or other valuable material, whether or not dredged, to such a point on the OCS would be prohibited by the Jones Act.

The OCSLA also makes the laws of the United States applicable to artificial islands erected on the OCS for the purpose of exploring for, developing, or producing resources from the OCS. As I indicated in my prepared testimony, under our interpretation of the coastwise laws and the OCSLA, the transportation of dredged material from a coastwise point to a point on the OCS for the purpose of constructing an artificial island for resource exploration, exploitation, or development is coastwise transportation within the Jones Act once a part of the incipient artificial island is above the mean high water level. The transportation from a coastwise point in a non-coastwise-qualified vessel of merchandise such as gravel, whether dredged or not, or other valuable material, whether or not dredged, for the purpose of constructing an artificial island for resource exploration, exploitation, or development would be prohibited once any part of the incipient artificial island was above the mean high water level.

S. 1988 would not make the Jones Act apply to prohibit the transportation from a coastwise point in a non-coastwise-qualified vessel of gravel which is not dredged or other valuable material which is not dredged to a point in the EEZ for dumping. As noted above, such transportation could not be prohibited by the Jones Act, if the dump site in the EEZ is considered a coastwise point by virtue of the OCSLA.

Question. Would enactment of S. 1988 authorize the use of the exempted foreign-built barges in point-to-point coastwise trade so as to permit them to be used to carry a platform from a U.S. port to, and launch it at a "point" inside the territorial sea or within the EEZ? If so, would S. 1988 grant greater coastwise trade privileges than existed under the "dual-mode" authority you permitted prior to C.S.D. 85-9?

Answer. That is correct, insofar as the transportation of platform jackets by launch barges described by S. 1988 is concerned. Our dual-mode movement rule was

only applicable to movements between coastwise points of plaform jackets and other merchandise in which the merchandise was carried in a vessel for part of the movement and towed for the remainder of the movement. The bill would permit the direct movement of covered platform jackets by covered launch barges, so the bill would permit transportaion by such barges which has not been permitted before.

Senator BREAUX. Thank you for your testimony. Let me see what that vote is and I might have to go over and vote and then come back.

Let me go ahead and get started while we are checking.

Mr. Creelman, in your testimony I thought you very eloquently reiterated your position or MarAd's position when they testified before the House on what is essentially the same legislation that is before the Senate today. And you said in that case, a case can be made that such ocean transportation should be considered coastwise trade for the purposes of the Jones Act.

I think it is reasonable that it would have been included had this been considered back when we first passed the Jones Act. With regard to the transportation of sewage sludge, something happened on the way to the Senate. The legislative position of MarAd reversed and now you are saying to essentially the same bill, that you can not support the bill that is before the Senate.

Is this a change in policy of MarAd or did you get called down by OMB and told, we do not like your first position?

Mr. CREELMAN. The problem with the bill with respect to the sludge barge issue has to do with the language that extends the Jones Act generally to the EEZ and points in the EEZ. It is a broad general extension, rather than a narrow, specific one.

Senator BREAUX. I understand that. But the first time around, you said it was a good idea.

Mr. CREELMAN. We were talking the first time around in our testimony, and I think the bill went through some adjustment between the time of the two statements. We were referring to the specific movement to a point 106 miles off the coast, which was an identified location rather than a broad general extension of the Jones Act to any place in the EEZ for any purpose generally. That is the difference.

Senator BREAUX. Not much, huh?

Mr. CREELMAN. That is your characterization, sir.

Senator BREAUX. Well there is not really any difference at all. I do not want to belabor the point because I know what happened. If you are talking about the transportation of sewage sludge and your testimony before the House, we are talking about a trade that has developed in ocean transportation of sewage sludge and other waste materials from points in the United States for dumping at sea. You do not say where at sea, but just talk about from a U.S. point to some site somewhere in the U.S. EEZ.

Your position at that time was that it seems reasonable that that should have been included under the Jones Act. It has been changed I would say, because now you are saying that this bill, which has essentially the same provision, that the Administration can not support it, and I think basically you are saying because it could impose unnecessary economic burdens on municipalities.

I note that MarAd as a member of this commission on merchant marine and defense participated in the process of formulating

these recommendations. John Gaughan was a contributing member of this. One of the recommendations of this report that MarAd agreed with was that the commission finds that the cost of cabotage laws are reasonable. It is going to cost some, of course it is. But your recommendation to the Congress says that these costs are reasonable in comparison with the economic security that they provide to our domestic trade, and that the laws contribute significantly to providing the maritime resources needed to the international defense requirements. That has always been the position of MarAd.

Now, and I do not want to testify for you, but I think what has happened is that MarAd has been forced to really change that and say you can now make considerations, meaning we can not support it any more. Isn't that correct?

Mr. CREELMAN. Well Mr. Chairman, as far as the cabotage laws are concerned, sure they cost. And in spite of that, we certainly do support them.

Senator BREAUX. But not in this case.

Mr. CREELMAN. Well, this requires an extension on a broad basis.

Senator BREAUX. Is it really an extension, or is it a clarification to something that did not exist when the first Jones Act was passed? We did not have sewage sludge dumping in the OCS or the EEZ at that time.

Mr. CREELMAN. Yes. But the language of the bill would broaden that to movement to points between points that are in the EEZ as opposed to a U.S. port to a specific point off the coast. And in my original testimony before the House, that matter was dealt with. And we referred to supporting the particular movement involved, and that was to a designated area.

But in that same testimony, we indicated that we were unwilling to extend it generally to the EEZ, but rather would prefer to look at those transportation requirements on a case by case basis, not being able to anticipate what they might be and how they might impact our situation.

Senator BREAUX. I do not want to cut you off like Dan Rather. I will be back but I do have to vote. I will be right back. We will be in recess until I return.

[Recess.]

Senator BREAUX. The subcommittees will please come to order. The witnesses will please come to the witness table and we will continue our questioning.

Mr. Creelman, I get the general drift of the argument of MarAd on sewage sludge, delivering of sludge material to a point on the EEZ. I think that you are trying to distinguish that in the House you were talking about the delivery of sludge from a particular point on the U.S. coast to a particular dump site. And the general support for that concept was given by MarAd because of that distinction.

The distinction here is that we are talking about any point in the EEZ, and because of economic considerations, the administration does not support this. But is it not true that MarAd supports other comparable activities of material on vessels leaving a U.S. port to any place within the EEZ. That type of carriage, has to be Jones Act carriage, and I cite two major, I think examples of that. A U.S. fishing vessel leaving a U.S. port to fish anywhere in the EEZ, no

particular point, no particular block or area, or part of the Gulf or Atlantic or Pacific has to be a Jones Act vessel.

Any oil and gas supply boat, crew boat, what have you that leaves a U.S. port to go to any part of the EEZ also has to be a Jones Act vessel.

But now you say that if it is a vessel leaving a U.S. port with sludge that goes anywhere within the EEZ, it does not have to be a Jones Act, and the rationale is as I take it, it is because you do not know where it is going.

What is the difference?

Mr. CREELMAN. Well I think in addition——

Senator BREAUX. Pull the mike a little closer, please.

Mr. CREELMAN. In addition the language would suggest that movements between any two points in the EEZ would be Jones Act. Not necessarily from a U.S. port to some point in the EEZ, but between two, any two places in the EEZ. It is very broad and very general, and my understanding of the policy is that there is a desire to look at and review circumstances case by case, because they are difficult to anticipate.

Senator BREAUX. For instance on the Jones Act requirement for U.S. fishing vessels leaving a point or a port, what is the other port that it goes to?

Mr. CREELMAN. It goes anywhere in the EEZ, quite true.

Senator BREAUX. The same thing with the sewage sludge. In fact it probably will have a specific designated dump site that a permit has been issued for. That is going to be a very specific site. Suppose this legislation said that a sewage sludge carrier that has a permit to leave a U.S. port and to deposit that material at a particular pin pointed site identified in their permit, would the Administration change their position? Because then you have a clear point where it is going outside of that U.S. port, or would your position be the same?

Mr. CREELMAN. I think what you have described is what we understood to be the situation when we testified in April of last year.

Senator BREAUX. Okay. Suppose we amend this bill and say that a sludge carrier that leaves a U.S. port with a permit on board that allows it to deposit that material at a designated point clearly defined within the U.S. EEZ, would you than support this legislation as you did in the House?

Mr. CREELMAN. We would certainly review it very carefully.

Senator BREAUX. I know. But you have already reviewed it when you testified on it the first time. I am saying the same thing as the language apparently clarified in the House language. You have already reviewed that.

Mr. CREELMAN. We did review that the last time. That was a clear position the last time.

Senator BREAUX. Would it be a clear position this time?

Mr. CREELMAN. Certainly we would want to look at the language. But that is a much narrower, less general position that we would be much more likely to approve.

Senator BREAUX. We had asked a private consulting firm to try and identify launch barge capacities around the world for us to try and see what we were talking about as being available. And we

had this private survey, but we had asked MarAd to review the private surveys, from an Administration standpoint.

Has someone had time to do this?

Mr. CREELMAN. Yes, we have. We have reviewed a number of sources' information and we have been pursuing some further sources here this morning as well.

We find differences in the various sources. Some very small differences, some others that are more significant. Our list, as it stands now, and this has gone through several iterations in the last number of days, contains 42 launch barges world wide, five of which are registered in the United States, seven of which are registered foreign, above the 12,000 ton capacity.

Senator BREAUX. So in the U.S. we have five U.S. owned, seven foreign owned for a total of 12?

Mr. CREELMAN. That's right. And however the document that you referred to, the Barnett & Casparian document warns us that launch capacity is a very subjective thing and can differ, depending on the vessel to be launched. And so it is not an absolute number. But we have been gathering the best information we can. We have been trying to compare it for reasonableness against the size of the vessel, its displacement, its dimensions and——

Senator BREAUX. Let us have that information, because I would like to make it part of the record when it is complete and maybe if it is not complete now I would like to have it when it is complete.

[The following information was subsequently received for the record:]

Senator BREAUX. What is the largest U.S. owned launch barge, from a launch size capacity perspective, that you were able to identify?

Mr. CREELMAN. We have two. We have two that on the basis of the number we have for approximate launch capacity that are of the same size.

One is the Intermax 650 owned by McDermott.

Senator BREAUX. I am sorry. I may not have made the question clear. I know I did not.

What is the largest U.S. built launch barge, U.S.-flagged, U.S. built?

Mr. CREELMAN. The largest U.S. built and U.S. registered vessel is a Heerma barge owned by Heerma, I understand a Dutch firm. It is the MWB-403. Its capacity, its launch capacity we show as 6,300 long tons.

Senator BREAUX. I want to make sure that we are clear just for the record purposes. The largest U.S. built, U.S.-flagged existing launch barge, capacity wise, is a 6,300 long ton barge?

Mr. CREELMAN. That is correct, based on the information that we have. And its gross registered tonnage as reported in the American Bureau of Shipping Register is 9,561 gross registered tons.

Senator BREAUX. Is that foreign flag or U.S. flag?

Mr. CREELMAN. That is U.S. registered, U.S. built. We cannot confirm that it is Jones Act qualified. What its chain of title has been, we are not sure.

Senator BREAUX. The largest one you can identify is the 6,300 ton?

Mr. CREELMAN. Yes.

Senator BREAUX. Just for the purposes of trying to understand the situation with regard to MarAd's policy, because, with all due respect to you, and I think you and I have known each other and have worked together, and I know how you feel and your dedication to making this industry work.

Having said that, it seems that the official position that MarAd has taken on some of these issues is totally inconsistent. And I think it is a requirement that we try and clear up some of the areas.

Because apparently MarAd would have, under the current law, the way we operate today, MarAd would have no objection, as I understand it, to a foreign-owned and foreign-flagged launch barge transporting a platform, an oil platform to an open water site, say, in the Gulf of Mexico.

Not with any kind of a rig there or any kind of a marker there, but what we would refer to as a pristine site, and dumping or launching that platform in no particular spot in the Gulf of Mexico. Is that not correct?

Mr. CREELMAN. That is what the law permits, as it now stands.

Senator BREAUX. And my understanding is that apparently the Administration opposes allowing that very same foreign-owned launch barge, even if it is a U.S. flagged, to transport that same platform that was built in a U.S. yard to an installation point on the OCS somewhere in the Gulf, where there is, for instance, a pre-existing wellhead, which may be only a few hundred yards from this open water site that we allowed the foreign-built and foreign-owned barge to dump it.

In other words, there is no problem right now in the current law allowing that foreign-built launch barges, taking this big piece of equipment and dumping it in the Gulf, 100 yards from this site that has a wellhead.

But that we could not take that same launch barge, and require that it be U.S.-flagged, and bring that same piece of equipment and put it here. That policy, I would suggest, makes no sense.

Mr. CREELMAN. But that is not a policy. That is what the law permits.

Senator BREAUX. That situation——

Mr. CREELMAN. This is not a question of MarAd policy. It is a question of United States law, as it presently exists.

Senator BREAUX. My concern is that when I asked MarAd for a policy recommendation to correct that, you oppose it.

Mr. CREELMAN. We have not opposed the exemption for a class of vessels, which would obviate that anomaly in the law.

So rather than exempt certain specific vessels we have exempted, we have not opposed the exemption of a class of vessels though foreign-built, which would permit the U.S. jacket fabrication community—the shipyards that build jackets—to continue to bid on them regardless of where they would be dumped in the Gulf.

And so this is an approach which we do not oppose that would appear to solve that problem for the foreseeable future.

Senator BREAUX. Do you see any problem with the recommendation, if it in fact allows the creation of a monopoly, because in the real world if you got the barges that you listed, five U.S.-owned foreign-built, seven foreign-built foreign-owned.

If we have a requirement of U.S. ownership, and only five of them meet that requirement, and all five are owned by the same company, from a policy standpoint, is that a good recommendation for MarAd to, in fact, create that type of monopoly?

Mr. CREELMAN. Well, we are certainly not——

Senator BREAUX. I am sure the company would love it.

Mr. CREELMAN. We are not proposing to create a monopoly.

Senator BREAUX. But it does that, does it not? In the current real world?

Mr. CREELMAN. Well, in the current real world, I think it is entirely possible that the seven that are foreign, since they are grandfathered, in effect, could be brought under a U.S.-owned entity.

Senator BREAUX. The key word is could be. Suppose they do not? Would we not in the real practical world have created a monopoly where only one company owns the only ones that would be eligible to come in a do the work?

Mr. CREELMAN. Well, I doubt that. Barges can be, vessels can be converted.

This would, if they were a monopoly and if an outrageous price was the result of a monopoly situation, I think it is reasonable to expect that the marketplace, which has been a very innovative one in the Marine community, especially in the Louisiana Gulf Coast, we would find a way to clear that market. We would expect that to happen.

Senator BREAUX. Do you have any MarAd applications for pending construction of any launch barges of 12,000 or greater launch tons capacity?

Mr. CREELMAN: We do not have, to the best of my knowledge. Are you referring to applications for Title XI mortgage guarantees?

Senator BREAUX. Yes, sir.

Mr. CREELMAN. Not to my knowledge.

Senator BREAUX. Do you know of any contracts for the construction in the industry of any launch barges of that capacity or greater?

Mr. CREELMAN. I do not.

Senator BREAUX. Perhaps Ms. Peterson, a policy type of question.

I was trying to find out the situation that we are in. I think it makes no sense from a policy standpoint. I would suggest that it is the fault of Congress for not clarifying it, which I am trying to help correct.

The fault of policy recommendations that say for fishing vessels, for crewboats and workboats and supply boats, it is one way, but for a sewage sludge barge it is going to be a different way.

I think we are all at fault in having a policy that is pretty chaotic. To allow a situation where Customs rules, that in effect you can use a foreign-built barge to dump a piece of equipment in the middle of the Gulf.

But if you dump it on a particular site in the Gulf, you have to use a U.S.-built barge, despite the fact that there are none. I mean, do you agree, that something maybe ought to be done to correct this policy?

It is not consistent from my perspective. Is it consistent from Customs?

Ms. PETERSON. Mr. Chairman, in terms of the policy, we have made it clear that we defer to the Department of Transportation in terms of the Administration policy. In terms of our interpretations. Certainly, it does seem rather strange that some things can be done and others cannot. But the Jones Act itself, section 883 of Title 46, has 10 provisos attached to it already, which means we have 10 different situations in addition to the standard positions.

Senator BREAUX. Well, I appreciate both of you being here and testifying. I know it is not easy. I know Marad has been under a great deal of pressure, in order to formulate your final position.

I know that Marad has been a strong supporter of some of the efforts of many of us to try and make some improvements in this area, and I appreciate that.

Senator Inouye has some questions that he would like to be presented to you all to respond to, and I would hope that you would respond to them in due fashion. Also Senator Hollings, and there may be some other Members of the Committee who would like you all to respond to some questions.

Mr. CREELMAN. We would be happy to do that, and Mr. Chairman, when our list is a little more complete, we will make it available to you.

Senator BREAUX. Thank you very much.

I would like to welcome our second panel consisting of Mr. Richard Albers, General Manager of Standard Marine Services on behalf of the American Waterway Operators, and Dena Wilson who is going to accompany him, Mr. Eric Tanzberger, who is President of Bean Dredging Company of New Orleans, Mr. Gerard Blomberg, who is President of B&B Dredging, Mr. Frank Pecquex, who is Executive Vice President of the Seafarer's International Union.

Lady and gentlemen, if you would take your places we would be pleased to receive your testimony. I would ask the witnesses if they would please summarize your testimony. We have your complete testimony in our folders, and it will be made part of the record.

I would ask also the same unanimous consent that the Members who have some written questions that they would like to have submitted for you folks be responded to in a timely fashion.

Mr. Albers, I guess we have you down first. If you would like to begin, we would be pleased to receive your testimony.

STATEMENT OF RICHARD F. ALBERS, GENERAL MANAGER, STANDARD MARINE SERVICES, INC., ACCOMPANIED BY DENA WILSON, VICE PRESIDENT, LEGISLATIVE AFFAIRS, AMERICAN WATERWAYS OPERATORS

Mr. ALBERS. Thank you. Good morning, Mr. Chairman and Members of the subcommittee.

My name is Richard Albers. I am General Manager of Standard Marine Services headquartered in Bayonne, New Jersey. I am accompanied by Dena Wilson, Vice President of Legislative Affairs of the American Waterways Operators, the national trade association of the coastal and inland tug and barge industry.

Standard Marine owns and operates equipment used in transport of sewage sludge from municipal sewage treatment plants in the metropolitan New York and New Jersey areas. We also own and operate towing vessels qualified for coastwise transportation.

AWO appreciates the opportunity to submit our views on S. 1988, legislation to amend the Merchant Marine Act of 1920. My comments will be devoted almost exclusively to provisions of S. 1988 relating to the transportation of what is termed valueless material within the 200-mile exclusive economic zone.

S. 1988 constitutes a companion to H.R. 82, legislation passed by the House of Representatives in July, 1987. AWO strongly supports H.R. 82 when it was considered in the House, and looks forward to favorable attention in the Senate. We thank you, Senator Breaux, for introducing S. 1988 and extend our appreciation to the Chairman of the full Committee, Senator Hollings, for his commitment to hold early hearings on this legislation.

The need to clarify the Jones Act in this regard became clear several years ago when the Environmental Protection Agency announced that sewage sludge disposal at the existing 12-mile site, which had been in use for many years, would be phased out, and designated a new disposal site 106 miles off the New Jersey coast. The existing barge fleet used to transport this material to the 12-mile site lacks the capacity to transport all of the sludge to the new offshore site. The affected municipalities were therefore forced to construct or contract out for the use of new barges.

In May 1986, the City of New York entered into a contract with a Singapore-based shipyard for the construction of four barges to be used by New York City to dispose of its sludge at the 106-mile site. Both foreign and domestic shipyards submitted bids for the multi-million dollar contract. The agents for the foreign shipyard that ultimately won the contract sought and received confirmation from the U.S. Customs Service that the barges were not subject to the requirements of the Jones Act, because (one) the 106-mile EPA-designated disposal site fell outside the three-mile limit which traditionally defines the jurisdiction of the Act, (two), as sewage

sludge has no value, it did not fall within the interpretation of merchandise under the Jones Act.

My company subsequently asked the Customs Service to reconsider its ruling based on a 1982 amendment to the Jones Act placing incineration of hazardous materials at sea, far beyond the three-mile limit within its jurisdiction. We also asked Customs to reconsider its interpretation of the term merchandise. In September 1986, Customs responded, stating that it appeared the material in question did fall within the definition of merchandise. A lawsuit filed against the City of New York, unsuccessfully, I might add, failed to clarify the application of the Jones Act to this situation.

Certain activities occuring on the Outer Continental Shelf are subject to domestic cabotage laws. Other activities have been determined to be beyond the application of our cabotage laws.

The confusion which obviously abounds on the applicability of the Jones Act to transportation beyond the three-mile limit caused us to seek legislation along the lines of S. 1988.

Sludge disposal barges can and have been constructed in U.S. ship-yards, and future U.S. construction of these vessels will be assured by enactment of this legislation.

The lack of clarification of this situation has greater ramifications for U.S. towing operators and their U.S. crews. At present, foreign companies would be eligible to bid on towing contracts for sewage sludge transport, and can offer lower rates than American operators because they are not required to meet U.S. standards for safety, insurance, workmen's compensation, the environment, and so on. S. 1988 places the relating towing of vessels transporting valueless material and dredged material under the jurisdiction of U.S. cabotage law, to protect this transportation segment for the U.S. merchant marine.

This goal, of course, coincides with the overall purpose of the Jones Act: That is, to have adequate U.S. maritime assets, seamen, and vessels in place in time of national emergency.

Before concluding, I would like to address briefly that section of S. 1988 which would grandfather foreign-built and foreign-owned launch barges with carrying capacities of 12,000 long tons or more.

Today's hearing will allow the Members of the subcommittee and the full Committee to consider the views of proponents and opponents of this proposed action. AWO recently submitted comments to the Customs Service in opposition of its proposed interpretative ruling pertaining to foreign-built launch barges.

In the context of the legislation before the subcommittee, AWO, in consultation with member companies that submitted similar comments, will not oppose the launch barge provision.

The tug and barge industry is grateful for the profound commitment of this Committee to maintaining a strong and viable U.S. merchant marine. I would also like to thank you for insuring a future for the industry by your efforts to have maritime services removed from the scope of the U.S.-Canada free trade agreement.

Mr. Chairman, again, we appreciate the opportunity to submit our views on S. 1988, and we will be pleased to answer any questions you or your colleagues may have.

Senator BREAUX. Thank you very much, Mr. Albers. Next we will hear from Mr. Eric Tanzberger. Eric, it is good to have you.

STATEMENT OF ERIC TANZBERGER, PRESIDENT, BEAN DREDGING CO.

Mr. TANZBERGER. Thank you, Mr. Chairman. It is a pleasure to be here.

My name is Eric Tanzberger. I am President of Bean Dredging Corporation in New Orleans. I am pleased to be able to testify on S. 1988 on behalf of the American dredging industry, and in place of Mr. Billy James, who had another conflict.

We fully support the provision of the bill, which clarifies that the Jones Act applies to the transport of valueless material, and any dredge material, regardless of whether it has commercial value, from a point or place in the United States or a point to or from a place on the high seas, within EEZ.

The bill makes it clear that United States coastwise trade laws extend beyond the territorial sea. By doing so the bill ensures that the transportation of sewage sludge and dredge materials be transported in vessels constructed in the United States, with 75 percent ownership vested in U.S. citizens, manned by U.S. citizens, and documented for coastwise trade.

During the past decade, our industry has invested hundreds of millions of dollars in building technologically advanced dredging equipment. Our state-of-the-art hopper dredge fleet is the finest in the world.

All of our vessels, including ocean-going scows, have been built in American shipyards. However, unless our coastwise trade laws are extended beyond our territorial waters to the EEZ, 200 nautical miles from shore, transportation of valueless material, as well as dredge material of commercial value, will in the future be dominated by vessels built in foreign shipyards with less costly labor and foreign government sponsored subsidies.

Foreign-owned dredges would soon take over the market in dredging and transporting materials to the high seas and from a point to a place in the United States. Section five of the bill grandfathers the dredge *"Columbus"* owned by B&B Dredging Corporation, which is predominantly controlled by a Dutch dredging firm.

We have no objection to this section or to the amended language proposed by B&B, providing the Committee report clearly states that the purpose of this section is to only preserve the existing limited privileges of the dredge *Columbus* for carriage of valueless dredge material, as defined in the U.S. customs ruling VES-10-02-R:CD:C102446 CR/102173 dated December 7th, 1976, and that the intent of this section is not to expand its present privileges for carriage beyond existing coastwise trade laws. We strongly urge the Committee to favorably report this urgent and necessary legislation.

We appreciate the opportunity to testify before the Committee on this most important legislation. Thank you.

Senator BREAUX. Thank you, Mr. Tanzberger. Next we have Mr. Blumberg.

STATEMENT OF GERARD D. BLOMBERG, PRESIDENT, B&B DREDGING CORP., ACCOMPANIED BY DON SHAFTO, COUNSEL

Mr. BLOMBERG. Mr. Chairman and members of the committee:

My name is Gerard Blomberg. I am a shareholder and director and president of B&D Dredging Corporation. With me today is B&B's attorney, Don Shafto, B&B's attorney. I am a naturalized U.S. citizen. My English is not as good as I would like, and I would therefore ask your indulgence in permitting counsel to assist me in answering any questions.

Three members of the board of directors, including myself, are U.S. citizens. The fourth is a Dutch citizen. I own 36 percent of B&B stock. The other 64 is owned indirectly by Dutch citizens.

B&B is a Delaware corporation and it is a U.S. citizen within the meaning of applicable laws qualified to own and operate vessels engaged in trade other than the coastal trade.

The *Columbus* was built in the U.S. as a landing ship or LST. In the report in its conclusion of S. 1988, it would grandfather the *Columbus* to engage in the dredging and transportation of certain dredged material. The text of the grandfather provision, it would be enacted as an amendment to Section 5 of S. 1988. It was annexed as Exhibit 5[1] to the statement previously submitted to you.

The vessel was acquired by B&B and its predecessors in title in reliance on current U.S. laws, interpretations by the Coast Guard and the Bureau of Customs and Federal court decisions. These are detailed in the written statement.

In reliance on such rulings and court decisions, B&B and its predecessors acquired the *Columbus* and expended fairly considerable sums of money in U.S. shipyards to rehabilitate and repair it.

S. 1988 would legislatively reverse the rulings and court decisions relied upon by B&B and its predecessors in title in acquiring, improving and repairing the vessel. If S. 1988 becomes law without the inclusion of a grandfather provision for the *Columbus*, B&B would suffer irreparable injury, jobs created by B&B would be eliminated, and competition for dredging contracts would be adversely affected, thereby possibly increasing the cost to the U.S. of dredging projects.

As a personal matter, 17 years of my working life have been connected to this and my life savings are invested in the vessel. Without the inclusion of a grandfather clause in S. 1988, there is no doubt that B&B will go out of business and our entire investment will be lost.

Present Section 5 of S. 1988 is a grandfather provision preserving the rights of the *Columbus* to transport valueless material between points in the United States. This provision was drafted to address the prohibition of Section 1 of H.R. 82, the predecessor bill to S. 1988. It was discussed at length with members of the Senate and the House and their staff and found acceptable.

However, Section 1 of S. 1988 was expanded to include other activities which were not addressed in H.R. 82 for which the *Columbus* was recommended and which it is entitled to engage in under present law, for example the dredging of sand outside the three mile limit and its transportation to points within the U.S. in connection with beach nourishment projects.

---

[1] The exhibits were not reproducible.

Accordingly, B&B now seeks to have certain technical revisions made to Section 5 to meet the expanded restrictions of Section 1 to continue the eligibility of the *Columbus* to engage in all activities for which it was documented. No attempt is being made to make the *Columbus* eligible to engage in other activities.

B&B's clear understanding and the intention is that the grandfather provisions contained in Section 5, including the technical reasons thereto requested by B&B, are intended to and do in fact apply only to the *Columbus*.

With the inclusion of the requested grandfather provision which B&B believes is appropriate on technical grounds, B&B otherwise fully supports those provisions of S. 1988 that provide that the Jones Act shall apply to the transportation of valueless material and the transportation of such material regardless of its commercial value.

Thank you.

[The statement follows:]

STATEMENT
OF
MR. GERARD D. BLOMBERG,
PRESIDENT OF B&B DREDGING CORP.,
SUBMITTED TO THE SUBCOMMITTEE
ON MERCHANT MARINE OF THE COMMITTEE
ON COMMERCE, SCIENCE AND TRANSPORTATION
OF THE UNITED STATES SENATE CONCERNING
SENATE BILL S.1988,
AMENDMENTS TO THE MERCHANT MARINE ACT OF 1920

Mr. Chairman and Honorable Members of the Committee. My name is Dick Blomberg. I am a shareholder, director and President of B&B Dredging Corp., a Delaware corporation with its principal place of business in Crystal River, Florida. With me today is B&B's attorney, Mr. Donald Shafto of New York City. I am a naturalized U.S. citizen.

I appear today in support of inclusion in the bill before you, S.1988, of a grandfather provision which would continue the eligibility of B&B's United States flag vessel, the COLUMBUS, to engage in the business of dredging and transportation of certain dredged material which, under current law, it is eligible to engage in. The Vessel was acquired and substantial improvements were made to the Vessel in the United States in reliance on current United States laws and interpretations thereof by the United States Coast Guard and the Bureau of Customs.

Before addressing the provisions of S.1988 and how they affect B&B and the COLUMBUS, I think it important to set before you certain pertinent facts about B&B and the COLUMBUS.

BACKGROUND

The Board of Directors of B&B consists of four members. Three members of the Board, including myself, are U.S. citizens; the fourth member is a Dutch citizen. I own about 36% of the stock of B&B; the other 64% is owned indirectly by individual citizens of the Netherlands. B&B is a citizen of the United States within the meaning of applicable United States laws qualified to own and operate vessels engaged in trades other than the coastwise trade and the fisheries.

In the 1970's, my Dutch company, Blomberg B.V., owned this Vessel, prior to its sale and documentation as a United States flag vessel in 1977. All of my life's savings have been invested in this Vessel and virtually all of my working life has been connected with the ownership and operation of this Vessel.

The COLUMBUS was built in the United States in 1944 as a landing ship tank or LST. Subsequently, the Vessel was sold foreign and registered under foreign flag. As a result of the sale foreign and registration under foreign flag the Vessel permanently lost its coastwise trade privileges under Section 883 of Title 46 of the United States Code, which reads in pertinent part as follows:

> "Provided, That no vessel having at any time acquired the lawful right to engage in the coastwise trade either by virtue of having been built in or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry shall hereafter acquire the right to engage in the coastwise trade:...."

After the Vessel was sold foreign it was converted into a self-propelled, self-loading hopper dredge at a European shipyard. In about 1976, CDECO Maritime Construction, Inc., a Delaware corporation, proposed to purchase the Vessel, which was then owned by my Dutch company, Blomberg B.V., for charter to Roger J. Au & Son, Inc. for dredging in the United States. Prior to purchase of the Vessel by CDECO Maritime Construction, Inc., applications were made to the United States Coast Guard and United States Bureau of Customs for rulings as to the eligibility of the vessel for documentation as a United States Vessel to engage in dredging of polluted material in the United States. Those rulings related to interpretations of Section 292 of Title 46 of the United States Code, which prohibits foreign-built dredges from engaging in dredging in the United States, and of Section 883 of Title 46 of the United States Code, which prohibits, among other things, the transportation of merchandise between two points in the United States embraced within the coastwise laws other than in a vessel built in the United States which has never been sold foreign or placed under foreign flag.

The Coast Guard ruled on September 20, 1977 that if all the equipment installed abroad to convert the Vessel into a dredge were removed and the Vessel was thereafter returned to the United States and reconverted into a dredge in the United States, the Vessel would not be considered "foreign-built" for purposes of Section 292 of Title 46 of the United States Code and would be eligible for documentation to engage in dredging in the United States. A copy of the Coast Guard ruling of September 20, 1977 is attached as Exhibit 1 to this statement.

The Bureau of Customs issued two rulings in late 1976 and 1977 that the Vessel could engage in United States territorial waters in the transportation between points in

the United States of polluted materials dredged by it because such materials did not constitute "merchandise" within the meaning of Section 883 of Title 46 of the United States Code; in other words, such transportation did not constitute coastwise trade. This was in keeping with the long-held view of the Bureau of Customs, the government agency with jurisdiction over the activities covered by Section 883, that valueless materials are not considered "merchandise" for purposes of Section 883. Copies of the 1976 and 1977 Customs' rulings are attached as Exhibit 2 to this statement.

In reliance on these rulings, the dredging equipment installed on the Vessel abroad was removed and the Vessel was returned to the United States where it was reconverted into a self-loading hopper dredge at a United States shipyard. The Vessel was subsequently documented as a United States flag vessel under the name ESPERANCE III and was issued a Certificate of Documentation endorsed with a restrictive notation prohibiting employment of the Vessel in the coastwise trade by reason of its having been sold foreign and having been documented under foreign flag. The vessel currently holds such a Certificate of Documentation.

The rulings of the Bureau of Customs were subsequently challenged in the United States District Court for the Western District of New York in the case of Great Lakes Dredge & Dock Company, et al. v. Ludqwiq, et al., 486 F. Supp. 1305, 1980 A.M.C. 2295 (W.D.N.Y. 1980), affirmed without opinion, 636 F.2d 1201, 1981 A.M.C. 896 (2nd Cir. 1980). The case involved an award by the Army Corps of Engineers of a dredging contract for the dredge and removal of polluted material by the Vessel in the Great Lakes. The District Court sustained the rulings of the Bureau of Customs and the decision of the District Court was affirmed without opinion by the United States Court of Appeals for the Second Circuit. Copies of those decisions are attached as Exhibit 3 to this statement.

The Vessel was subsequently acquired by B&B and renamed "COLUMBUS" in 1986 following the financial collapse of the Vessel's former owner, CDECO Maritime Construction, Inc. B&B, like CDECO Maritime Construction, Inc., acquired the Vessel and expended considerable sums of money in United States shipyards to rehabilitate, improve, upgrade and repair the Vessel to make the Vessel fit to engage in activities determined to be legally permissible and not deemed to be coastwise trade, e.g., the dredging and transportation of valueless material in the United States, and beach nourishment work involving the dredging of sand outside the three mile limit, all in reliance upon the aforementioned rulings, interpretations, consultations and Court decisions. Inquiries were also made at various times to the United States Coast Guard and the Bureau of Customs

concerning the eligibility of the Vessel to engage in beach nourishment programs and advice was given by such agencies to the effect that the Vessel would be eligible for such work provided the sand was dredged from places outside the three mile territorial limit of the coastwise laws.

In B&B's case, more than $800,000 has been expended in 1986 and 1987 to rehabilitate and maintain the Vessel to engage in the business for which it was acquired. B&B's predecessors in title spent in excess of $4,000,000 to acquire and improve, convert and upgrade the Vessel also in reliance upon its understanding of the Vessel's status under United States law. It may also be important to note that the very substantial portion of the original sales price of the Vessel (after repayment of bank debt) due to my company was never paid because of CDECO's financial collapse and that the Vessel was in effect repossessed by me after protracted bankruptcy proceedings under a second mortgage after the interest of the first mortgagee was acquired by me at considerable cost. These funds were furnished by me and resulted in all my life savings being invested in the Vessel.

Dredging and transportation of dredged materials by the COLUMBUS is the only business engaged in by B&B. The COLUMBUS was most recently engaged in maintenance dredging in the Rochester, New York and Oswego, New York harbors, under a contract let by the Buffalo District of the United States Army Corps of Engineers. It is to be noted that the $725,000 contract was awarded to B&B and completed by B&B for a price which was 25% below the government's cost estimates for the project. Prior to that time the COLUMBUS was engaged in other dredging projects in the Great Lakes. Those projects involved the transportation of polluted dredged material of no commercial value required to be dumped in confined disposal areas designated by the United States Army Corps of Engineers. In addition, the economic analysis of B&B's investment in the Vessel has always been based upon the eligibility of the Vessel to bid on beach nourishment contracts involving the dredging and transportation of dredged material from beyond the three mile limit.

If S. 1988 becomes law without inclusion of a grandfather provision preserving the eligibility of the COLUMBUS to engage in the business activities for which it was acquired and converted, B&B would suffer irreparable injury, jobs created by B&B would be eliminated, and competition for dredging contracts in the United States, especially dredging contracts let by the United States Army Corps of Engineers, would be adversely affected, thereby increasing the cost to the United States of dredging projects sponsored by the Army Corps of Engineers.

Let us turn now to the provisions of S. 1988 and their evolution.

H.R. 82 to S. 1988

On July 27, 1987, the House of Representatives approved H.R. 82, a copy of which is attached as Exhibit 4 to this statement. H.R. 82, as originally introduced by Representative Mario Biaggi, was aimed at amending the Merchant Marine Act, 1920 in a very limited way to require that only vessels eligible to engage in the coastwise trade of the United States be used to transport municipal sewage sludge from a point in the United States to a point on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983. However, before its adoption by the House, H.R. 82 was amended to provide that the definition of "merchandise" within the meaning of Section 883 of Title 46 of the United States Code be deemed to include valueless materials. The effect of this amendment would be to change the present law to require that valueless materials be carried only in vessels eligible to engage in the coastwise trade of the United States and would constitute a legislative reversal of rulings of the Bureau of Customs, rulings and Court decisions relied upon by B&B when it acquired the COLUMBUS. In other words, by changing the definition of "merchandise" to include valueless materials, only vessels eligible to engage in coastwise trade would be able to transport valueless material. Because the COLUMBUS was sold foreign and registered under foreign flag and thereby lost its eligibility to engage in coastwise trade, under H.R. 82 it would no longer be able to transport valueless materials in the United States.

The House of Representatives recognized the unfair impact of H.R. 82 on operators of four sludge barges being built in a foreign shipyard for use by the City of New York and another barge under contract to Nassau County, New York, companies which, like B&B, had relied on governmental rulings in contracting for the construction or acquisition of the foreign-built barges. Consequently, as a matter of fairness and equity, a grandfather provision was included in H.R. 82 (as Section 3 thereof), which protects the right to transport valueless materials by those barges. Such a grandfather provision is included in S. 1988 as Section 3 thereof.

B&B learned of the passage of H.R. 82 and the pendency in the Senate of a sister bill, S. 1292, offered by Senator Breaux. S. 1292, like H.R. 82 in its original form as proposed by Congressman Biaggi, was concerned with restricting the transportation of municipal sewage sludge from a point in the United States to a point on the high seas within the Exclusive Economic Zone to vessels eligible

to engage in the coastwise trade of the United States, that is to say, in vessels built in the United States which have never been sold foreign or placed under foreign flag.

B&B had no objection to S. 1292 in its original form. However, B&B was concerned that S. 1292 would be amended to conform to the amendments approved by the House of Representatives when it adopted H.R. 82.

Accordingly, since H.R. 82 had already been approved by the House, B&B directed its initial efforts to S. 1292. B&B sought inclusion of a grandfather provision in S. 1292 should S. 1292 be amended to conform to H.R. 82. B&B respectfully submitted to Senator Breaux last August that, because B&B, like the operators of the sewage sludge barges, had relied upon rulings of the Bureau of Customs, S. 1292, if amended to conform to H.R. 82, would constitute a legislative reversal of those rulings of the Bureau of Customs. B&B advocated that, as a matter of equity, a grandfather provision be added to S. 1292, as was done to H.R. 82 in the case of the sewage sludge barges, preserving the COLUMBUS' ability to engage in the activities for which it was documented under United States flag. As part of its effort, B&B and its counsel brought B&B's concerns and position to the attention of not only Senator Breaux but also each other member of the Senate Merchant Marine Subcommittee which was to consider S. 1292. B&B and its counsel also contacted and exchanged considerable correspondence with members of the staff of Senator Breaux and of this Committee to explain that passage of S. 1292 containing amendments to conform it to H.R. 82 would result in putting B&B out of business, which would in turn result in a loss of jobs created in the United States by B&B and an adverse affect on competition for dredging contracts in the United States, especially dredging contracts let by the United States Army Corps of Engineers.

At the same time, B&B and its attorneys communicated its position to Congressman Biaggi, sponsor of H.R. 82, Congressman Walter Jones, Chairman of the House Merchant Marine and Fisheries Committee, and staff members of the House Merchant Marine and Fisheries Committee. We learned that officials in the House of Representatives were unaware of the adverse impact on the COLUMBUS and B&B caused by the extension of H.R. 82 to transportation of all valueless material. When we explained how B&B had relied upon rulings of the Bureau of Customs and the Court decisions I mentioned earlier in my testimony, we found understanding and support for our request for a grandfather provision.

Our attorneys then conducted extensive discussions with all interested parties in the Senate and House, in person, over the phone and through extensive correspondence,

in an attempt to fashion a grandfather provision which would be acceptable to all for inclusion in S. 1292 and which would also be acceptable to both the Senate and the House of Representatives in the event S. 1292, containing a grandfather provision for the benefit of the COLUMBUS, and H.R. 82, without such a grandfather provision, were to be referred to a conference committee for the purpose of reconciling these two pieces of legislation.

The response to B&B's plea for consideration of B&B's position and for assistance in allowing B&B to continue to engage in its business was very gratifying. In each instance we received a positive response to our request for a grandfather provision on the equitable grounds I have referred to before. A grandfather provision was crafted to make it acceptable to all interested parties and Senator Breaux graciously agreed to sponsor an amendment containing the grandfather provision. By this time it had been determined that the Senate would consider H.R. 82 in lieu of S. 1292, so that the grandfather provision would be added as a Section 5 to H.R. 82. That same grandfather provision appears as Section 5 of S. 1988, which we understand has been introduced by Senator Breaux for consideration by the Senate in lieu of H.R. 82.

I would like to be able to stop at this point and tell you that B&B has no objection to S. 1988 provided that the grandfather provision contained in Section 5 as suggested to be revised in our letter to Senator Breaux of January 18, 1988 is included. The grandfather provision presently contained in Section 5 is in form acceptable to B&B insofar as it preserves the right of the COLUMBUS to transport valueless material between points in the United States embraced within the coastwise laws which would otherwise be prohibited by Section 1 of S. 1988. However, Section 1 of S. 1988 differs from H.R. 82 in that S. 1988 has been expanded to include other activities which were not addressed in H.R. 82 for which the COLUMBUS was documented under United States flag and in which the COLUMBUS is entitled to engage under present law, but which the COLUMBUS would be prohibited from engaging in if S. 1988 becomes law notwithstanding the grandfather provision presently contained in Section 5 of S. 1988. These expanded activities in which the COLUMBUS is currently eligible to engage but which would be denied to it by Section 1 of S. 1988 include the transportation of valueless material and dredged material regardless of whether it has value from a point or place on the high seas within the Exclusive Economic Zone to a point or place in the United States or to another point or place on the high seas within the Exclusive Economic Zone, as well as the transportation of dredged material regardless of whether it has value from a point or place in the United States to a point or place on the high seas within the Exclusive Economic Zone. Under present law,

neither the transportation of merchandise from a point (which is not an artificial island or fixed structure on the Outer Continental Shelf) beyond the 3 mile territorial limits of the coastwise laws to a point or place in the United States or to another point or place on the high seas within the Exclusive Economic Zone nor the transportation of merchandise from a point or place in the United States to a point or place (which is not an artificial island or fixed structure on the Outer Continental Shelf) on the high seas within the Exclusive Economic Zone is considered coastwise trade.

Let me give you an illustration of an activity in which the COLUMBUS is presently entitled to engage but would be prohibited to the COLUMBUS by the expanded provisions of Section 1 of S. 1988 unless the Section 5 grandfather provision applicable to the COLUMBUS is expanded. Currently, the COLUMBUS is entitled to engage in the dredging of sand outside the 3 mile territorial limit and the transportation of the dredged sand to a point or place in the United States in connection with beach nourishment programs.

B&B has always considered the eligibility of the COLUMBUS to engage in such beach nourishment program activities a basic economic consideration which justified the substantial investment in the COLUMBUS including its rehabilitation and repair in a U.S. shipyard at substantial cost for such purposes. The ability to participate in beach nourishment work enables B&B to employ the COLUMBUS in dredging operations year around and not just in the limited dredging season in the Great Lakes region. B&B based its substantial economic investment in the COLUMBUS in reliance upon its ability to use the Vessel in such beach nourishment program activities in more southerly U.S. climes during the winter. In other words, B&B acquired and expended considerable sums of money on the COLUMBUS in reliance on present law which not only permits the COLUMBUS to dredge and transport valueless materials but also permits the COLUMBUS to engage in other activities such as the dredging and transportation of sand in connection with beach nourishment programs which I have just described and which are not considered to be coastwise trade within the meaning of current law.

Accordingly, B&B respectfully submits that, as a matter of equity, the grandfather provision contained in Section 5 of S. 1988 be revised to meet the expanded restrictions of Section 1 of S. 1988 to continue the ability of the COLUMBUS to engage in all the activities for which it was documented. Attached to this statement as Exhibit 5 is an amended form of Section 5 of S. 1988 which B&B respectfully proposes be substituted for the existing Section 5 of S. 1988. I would like to note that the

proposed amendments to existing Section 5, which are underlined, are aimed only at preserving the Vessel's right to continue to engage in such of the activities in which it is entitled to engage under current law and for which it was documented, for which it was economically suited and designed and in respect of which substantial investments were made. There is no intent on B&B's part to do anything more than that; we are not trying to make the COLUMBUS eligible to engage in activities in which it is not entitled to engage under current law.

I would also like to repeat B&B's position throughout the entire history of its involvement with H.R. 82, S. 1292 and S. 1988, that B&B has no objection to specifically identifying the COLUMBUS by name in the grandfather clause. Nor is B&B wedded to any particular language. We and our attorneys are always open to other wording which would achieve our desired result. B&B knows of no other vessels which would be affected by Section 5 of S.1988 as proposed to be expanded by B&B.

I thank you for the opportunity to appear before you and testify on S. 1988. S. 1988 is of grave importance to B&B. Without a grandfather provision in S. 1988, B&B will suffer irreparable injury and will effectively be put out of business. Jobs created by B&B in the U.S. would be lost and competition for dredging contracts in the U.S. would be adversely affected. B&B respectfully requests your favorable consideration of inclusion of a grandfather provision in S. 1988 which would allow us to continue in business.

I also note that a vice president of B&B, Mr. Teunis Boele, of Krimpen ann de Lek, The Netherlands, is present in this hearing room today and would also be pleased to testify before this committee should any of the members so desire.

I thank you very much for your attention and for the opportunity to testify before this committee.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

QUESTION: To participate in the coastwise trade, a vessel must be documented in the United States, manned by United States seamen and owned by corporations of which 75% of the stock is held by United States citizens. Would B&B be willing to become 75% United States owned?

ANSWER: The activities in which B&B is presently entitled to engage utilizing the vessel COLUMBUS, and which would be preserved to it by Section 5 of S. 1988 (including clarifications thereof suggested by B&B), do not, under present law, constitute coastwise trade, and lawfully could be conducted by B&B even if it were 100% owned by non-citizens of the United States. The investments in B&B and the COLUMBUS made by the 64% non-United States citizen owners were made in express reliance upon the present state of the law permitting such ownership. B&B is in fact a citizen of the United States within the meaning of applicable laws respecting documentation of vessels for trades other than the coastwise trade and the fisheries. B&B is subject to the same manning requirements with respect to the vessel COLUMBUS as would be any United States corporation similarly situated and the absence or presence of foreign stock ownership would have no affect on such requirements. We suppose that B&B would consider the possibility of becoming 75% United States citizen owned, but B&B doubts whether or not a United States citizen investor willing to purchase an appropriate interest in the vessel at a fair price could be found. In this respect, when Mr. Blomberg, now President of B&B, re-acquired the vessel following the bankruptcy of its former owner, CDECO Maritime Construction, Inc., he made every effort over an approximate one and one-half year period to sell the vessel to United States citizens or to find United States citizen partners who would be willing to make the additional capital investment needed to make the vessel operational since he had by that time invested his life savings in the vessel. Mr. Blomberg diligently looked for United States citizen partners for his venture even though no legal requirement existed then or now which required stock of the vessel owning corporation to be owned by United States citizens. Unfortunately, Mr. Blomberg found no United States citizen partners willing to buy or invest in the COLUMBUS and, accordingly, he went to the Dutch family, Boele, who were close personal friends and asked them to

make an investment in the vessel and this they were willing to do. The amount of funds required to make the vessel operational were very considerable and were supplied by the Boele family and resulted in the present distribution of share ownership which is about 36% owned by Mr. Blomberg, a naturalized United States citizen, and about 64% by the Boele family through Dutch corporations. Even though efforts were made to find United States citizen partners for ownership and operation of the vessel, B&B was clearly of the understanding and always closely advised by legal counsel that the activities in which the vessel is engaged and is entitled to engage (and which are discussed below in response to your second question) were activities which could, under present law, be conducted by a vessel owned by a corporation organized in the United States which met certain citizenship requirements for officers and directors, which requirements B&B has always met, and which corporation otherwise could even be 100% owned by non-citizens of the United States. Accordingly, the equitable case which B&B wishes to make for Section 5 of S. 1988 with the clarifications thereto requested by B&B, is that B&B made very substantial investments in the CCLUMBUS based on the clear understanding that the COLUMBUS could lawfully engage in such activities notwithstanding the percentage of foreign ownership of B&B's stock. What S. 1988 does is to re-define and expand the definition of coastwise trade so that unless B&B is exempted from the provisions of S. 1988, it will be put out of business for two reasons: Firstly, because once having been sold foreign, the COLUMBUS lost its coastwise trade privileges (as such coastwise trade privileges are presently in effect) and cannot re-acquire them, and secondly, because if B&B were now forced to meet the 75% United States citizen ownership requirement because of the change in the coastwise laws contemplated by S. 1988, it would be forced to sell the vessel to United States citizen interests which, based upon past experience, does not appear to be a viable possibility.

QUESTION: What type of dredging activities do you believe Section 5 entitles your company to perform should this Bill become law?

ANSWER: If S. 1988 becomes law with the inclusion of Section 5 as suggested to be modified by B&B, B&B's present rights, utilizing the United States built, United States documented vessel COLUMBUS, to engage in certain dredging activities would be preserved -- no new rights would be conferred upon B&B by S. 1988. The dredging activities which B&B, utilizing the COLUMBUS, is presently entitled to perform are the following: the dredging and transportation of valueless material between points presently embraced within the coastwise laws, and the dredging and transportation of dredged material, whether or not of value, (i) from a point or place presently embraced within the coastwise laws to another point or place which is not presently embraced within the coastwise laws (including a place within the Exclusive Economic Zone), (ii) between two points not presently embraced within the coastwise laws (including two points within the Exclusive Economic Zone) and (iii) from a place not presently embraced within the coastwise laws (including a place within the Exclusive Economic Zone) to a point or place presently embraced within the coastwise laws. B&B is not permitted under present law, and would not be permitted by virtue of Section 5 of S.1988 with the modifications thereto requested by B&B, to transport dredged material of value between two points presently embraced within the coastwise laws.

QUESTION: Are you aware of any other vessels that could possibly satisfy the grandfather requirements contained in Section 5?

ANSWER: We are not aware of any vessel other than the COLUMBUS that could possibly satisfy the grandfather requirements contained in Section 5 of S. 1988.

Senator BREAUX. Mr. Blomberg, thank you. Your English is fine. Thank you for your testimony.

Mr. Pecquex.

STATEMENT OF FRANK PECQUEX, EXECUTIVE VICE PRESIDENT, SEAFARERS INTERNATIONAL UNION

Mr. PECQUEX. Good morning, Mr. Chairman. I am Frank Pecquex, legislative director of the Seafarers International Union of North America.

We are interested in testifying on this valuable piece of legislation and its similar counterpart, H.R. 82, which has passed the House, mainly because we have people who work both on dredges

and who are involved in towing activity which would be enhanced as a result of passage of this law.

Both pieces of legislation we think are extremely beneficial, mainly because they point out that the Jones Act or cabotage laws are neither static in scope nor are they frozen in time. The introduction of these bill proves, that the cabotage laws can be expanded to meet new national concepts, which was evidenced by the presidential declaration establishing the exclusive economic zone.

They show that they can be expanded to cover new technology, as legislation was passed several years ago to ensure domestic requirements for the operation of vessels engaged in shipboard incineration. And they also show that they can be used to close loopholes that exist in older services, such as the dumping of sewage sludge and also dredging spoils.

We would like to comment on two sections of the bill, the one dealing with the valueless materials and also the launch barge issue. The passage of S. 1988 is necessary to correct a court decision which deemed that this movement was not to be considered a Jones Act movement, and certainly the legislation as it is envisioned and drafted would certainly do that.

And this is important for a number of reasons. It is likely there will be increased activity on the OCS in terms of dumping activity, either sewage sludge or dredging spoils, and certainly we would like to see that become an all-American operation.

There are immediate benefits that would be derived. Certainly the shipyards that would build barges and/or towing vessels would see benefits. There would be increased steel production, and certainly there would be some shipboard employment.

The other issue that we would like to address, the launch barge issue, is something that became necessary following a 1984 Customs ruling which determined that this activity should be considered a domestic movement. We certainly think that the Customs ruling was right and proper, but we do recognize that a dilemma has been created.

In the absence of any large launch barges that were domestically built, yards that fabricate platform jackets have indicated that they will no longer be able to get involved in offshore work.

S. 1988 does offer a solution. It permits reflagging opportunities for the universe of foreign-built launch barges of 12,000 tons or better that exists out there.

And while we recognize that several launch barges may be reflagged, we think that such a far-reaching step may be unnecessary when we look at the real world scenario of how often these vessels will operate.

All of the launch barges will be infrequently used, and when they are employed they will be only used for short periods of time. It is our understanding that the market for domestic platform jacket movements down in the Gulf of Mexico is probably going to be on the average of three to five per year. We are also probably talking no more than a month for each movement.

So you have perhaps at a minimum of three to a maximum of five months of annual employment opportunities available for all the large launch barges. I think that the launch barges reflagged to date are probably far in excess of what we need.

We would suggest an alternate solution that would involve temporary waivers of cabotage requirements. We would suggest that the legislation be changed to allow for legislative instructions to the appropriate agencies to spell out that there is a universe of twelve large launch barges and basically point out which vessels are deemed eligible for temporary use in the cabotage trade. This would permit development of an automatic waiver procedure so that there would be no potential loss of work for the fabrication yards. We do not envision an elaborate process which would prevent a yard from bidding on this fabrication work.

The waiver duration should be limited to the period of time it would take to move the platform jacket out to a point on the OCS. In addition, all waivers would terminate on expiration of the useful life of the foreign-built equipment presently in operation worldwide or upon the availability of domestically built equipment.

If the launch barges that are in question are permitted to operate, either through the legislative language as suggested or our alternative recommendation, benefits would accrue to the maritime industry much like those derived from the valueless material provisions. It would certainly generate jobs in the shipyards and steel production and would involve, although to a much less extent, some towing operations.

In conclusion, we think that the overall benefits contained within S. 1988 for dredging interests, the domestic shipyards and for U.S. flag towing companies are significant enough to recommend action by the committee and by the Congress in passing this legislation.

We thank you, Mr. Chairman, for the opportunity to testify and are ready to answer any questions.

[The statement follows:]

STATEMENT OF FRANK DROZAK, PRESIDENT, SEAFARERS INTERNATIONAL UNION, AFL-CIO

As President of the Seafarers International Union, AFL-CIO, (SIU) representing unlicensed seamen employed on U.S.-flag ships engaged in America's domestic and international waterborne commerce, I appreciate the opportunity to offer our support for S. 1988, a bill to amend the Merchant Marine Act of 1920 to require tugs and barges used to transport sewage sludge to be built in the United States. Furthermore, the SIU encourages the Congress to expand the Jones Act to the jurisdictional limits of the U.S. Exclusive Economic Zone (EEZ).

The use of foreign-built vessels is permissible because of a loophole in the Jones Act. Foreign-built, flagged and/or crewed vessels are prohibited from transporting merchandise between points in the United States embraced within the coastwise laws. A foreign-built, flagged and/or crewed vessel may, however, as in the case of the sludge barges, leave one point in the United States and return to the same point after transporting or disposing of its cargo without violating existing law. This loophole has cost essential work for U.S. maritime industries in the past and will result in additional lost opportunities if it is not addressed in the near future.

A recent occurrence demonstrates the need for legislation such as S. 1988. Upon request, the City of New York received a ruling from the U.S. Customs Service, which found that sewage sludge is not merchandise and therefore not under the jurisdiction of U.S. cabotage laws. With that information, the City of New York began to solicit bids from foreign and domestic shipyards for the construction of four barges to be used for the carriage of the city's sewage waste sludge to an offshore disposal site. City policy mandates that contract awards go to the lowest bidder, which turned out to be a Singapore shipyard.

We believe that the underlying intent of the Jones Act, which is to promote our domestic shipbuilding and other maritime industries, is equally applicable in this situation. Therefore, these contracts should have been awarded to a U.S. yard. The

cost of constructing and transporting foreign-built barges and tax revenues lost by utilizing foreign firms and workers results in fewer benefits than if the barges were built in U.S. shipyards by U.S. citizens. Enactment of S. 1988 would benefit the national economy through the retention of U.S. dollars within our borders, thereby, reducing our overall trade deficit. In addition, the shipbuilding and steel industries would reap economic benefits from new construction orders.

The SIU believes that the use of foreign-owned and/or foreign-built barges, for this and similar operations, violates the spirit and the letter of the Jones Act and damages the nation's maritime and related industries. The action of New York City establishes a dangerous precedent by allowing foreign yards to construct barges to be used for domestic towing purposes. The existence of this loophole could very well lead to the use of foreign-built and foreign-crewed tugs for the related towing of these barges to and from disposal sites. Furthermore, it is not unreasonable to assume that other cities with similar waste disposal requirements will contract with foreign yards for similar construction.

Allowing the foreign construction of vessels used in the transportation of sludge denies badly needed work orders to U.S. shipyards. The preponderance of U.S. shipyards capable of fulfilling such a demand are reasonably cost competitive with foreign yards once import fees and transportation costs are added to foreign construction costs. Since 1981, when the work load for smaller second-tier U.S. shipyards was at its peak, new construction orders have declined by 85 percent, repair work has declined by 27 percent and overall shipyard employment has fallen by 65 percent. The construction of equipment carrying valueness materials, including sludge and dredged materials, to be used for domestic purposes in the U.S. EEZ should not be allowed to be constructed overseas.

Furthermore, foreign construction of sludge barges to be used within the U.S. EEZ will further injure the depressed domestic steel industry. Although, preliminary reports show that the U.S. steel industry is on the upswing, it has long suffered from foreign imports, which consistently capture one-third of the U.S. market, and low domestic demand. As a result, over 200,000 steel workers have lost their jobs since 1980. Voluntary trade restraints, put into place by the Administration in 1984, have not worked as intended and are often violated. These facts clearly show the need for an increased demand in domestic steel. S. 1988 will address this need.

The SIU believes that maritime law must adapt to the development of new technologies. As the need for expanded ocean based activities grows, the scope of domestic maritime law must also expand to govern these new activities. This trend of expanding the law to encompass new technologies is exemplified by the passage of the Outer Continental Shelf Lands Act, the Marine Protection Act, and the President's Proclamation of a 200-mile EEZ. As you know, coastwise requirements have been extended to the proposed operation of ocean incineration vessels. Since sludge barges are engaged in a similar waste disposal service, coastwise requirements should apply in this case as well. S. 1988 will help to update and clarify the necessary application of the cabotage laws of the United States.

The SIU further believes that all points and all maritime vessel activity within the jurisdictional limits of the U.S. EEZ should be subject to the coastwise laws of this nation, thereby, creating a more unified maritime policy. Our territorial waters have been expanded from the distance of a mere 3 miles, to a more widely accepted 12 mile limit and should now be further expanded to the 200 mile line, in order to advance the development of ocean resources and promote the protection of the marine environment for the benefit of the nation as a whole. By requiring the use of Jones Act vessels for all such activities conducted within the U.S. EEZ, many benefits will be realized including, enhanced national security and increased employment opportunities for U.S. merchant seaman, shipbuilders and steelworkers. In addition, greater environmental protection and personnel safety standards will be insured.

In the case of New York City, Site 106 should be considered a U.S. point within the meaning of the Jones Act because it is a point within the U.S. EEZ. Additionally, it is a site geographically designated by a U.S. federal agency, to be used by a U.S. political subdivision to dispose of U.S. source sludge. If someone were to dump elsewhere, he would be in violation of Environmental Protection Agency regulations. Site 106 is not a random point on the high seas, nor would be similarly designated future sites.

As the Subcommittee is aware, similar legislation (H.R. 82) was considered by the House of Representatives last year. During the House Merchant Marine Subcommittee hearings, a U.S. Customs Service representative pointed out that some provision should be made for enforcement purposes. If the transportation of sewage sludge and other valueless materials are subject to the Jones Act, a problem arises when a

vessel is found in violation of the Act, which normally entails forfeiture of the merchandise or an amount equal to the value thereof. Since this type of cargo has no intrinsic value, there would be no effective penalty. For this clear and apparent reason, the SIU encourages the Subcommittee to adopt a provision imposing a fine on those vessels operating in violation of the Jones Act. The amount of any fine imposed should be designed to effectively preclude the future use of foreign-built vessels in this trade.

Another issue that must be addressed is the provision which will exempt certain launch barges from the scope of this legislation. Although an advocate of American construction of vessels for the coastwise trades, we recognize the difficult position in which domestic shipyards, that engage in offshore oil industry work, find themselves. Owing to the likelihood of inadequate employment in either the domestic or international offshore oil recovery trade, it is doubtful that any American company could justify, in the short term, an investment in new launch barge construction. At the same time, we are aware that existing foreign-built launch barges, which are capable of carrying the larger deepwater platform jackets, are prohibited, according to a U.S. Customs Service ruling, from carrying these jackets from U.S fabrication yards to offshore launching sites. The issue left unresolved, however, will undoubtedly result in lost work for domestic shipyards which engage in platform jacket production. Although not desirable in normal circumstances, the use of foreign-built launch barges appears as the only available alternative to prevent American shipyards from being denied access to future offshore oil contracts.

In an effort to accommodate both sides of the issue, the SIU urges the Subcommittee to consider an arrangement which provides opportunity for American fabricators without damaging the principle that such movements are subject to U.S. cabotage requirements. It is suggested, therefore, that the legislation instruct the U.S. Customs Service to permit the use of specific foreign-built launch barges under closely controlled conditions. The launch barges eligible for this transportation movement should be limited to those presently operating or under construction. The waiver approval process should be completed on an expedited basis to permit interested domestic shipyards the opportunity to meet the bid requirements of the oil companies. Employment of these foreign-built launch barges should be limited to the period required to permit the deployment of the platform jacket on the outer continental shelf. Finally, the waiver authority itself should be limited to the useful life of the eligible foreign equipment or until comparable U.S.-flag equipment becomes available.

In conclusion, the SIU respectfully urges the Subcommittee to act favorably on S. 1988 in order to clarify the application of coastwise laws. The expansion of the Jones Act for the carriage of valueless materials such as sewage sludge and dredged materials throughout the U.S. EEZ is a positive step in developing a more unified maritime policy and wholly consistent with the recommendations of the Committee on Merchant and Defense. In addition, the U.S. maritime and related industries will be strengthened, the trade deficit will be reduced, and U.S. national security will be enhanced. The SIU stands ready to assist the Subcommittee in its efforts to secure enactment of S. 1988.

Senator BREAUX. Thank you very much to all of our witnesses for being here.

Mr. Pecquex, I notice in your testimony you talk about the transportation of sewage sludge and other valueless materials are subject to the Jones Act. A problem would arise if the vessel was found in violation of the Act because the fine is normally the forfeiture of the merchandise, in which case the government would be acquiring sewage sludge, which we probably have more than we need already.

So you suggest something ought to be designed for an effective penalty. We changed the bill, I think, from the House, which did not cover that, and we have a section I think which takes care of your concerns, which would amend the Jones Act to authorize the Treasury to recover those transportation costs that would be associated with the transportation of this valueless material conducted in violation of the Act as the penalty.

In other words, do not forfeit the sewage sludge. You would have to have a monetary payment of the value of the transportation of that cargo. And so I think we have tried to address that concern.

Mr. PECQUEX. I guess that is some concern, because we have seen violations of the Jones Act that apparently have not been deterred by the imposition of fines. Several years back, for example, there was one domestic movement of oil products from the West Coast via one of the offshore islands and during which the oil was not transformed in any fashion before it was put on a second foreign flag ship to complete the delivery to an East coast, American port.

I think they should have forfeited the cargo in this case. The eventual fine was $7,000, and I do not know if that was sufficient enough to preclude any further violations. In fact, we have received some information that a similar cargo movement may be presently underway right now. We are exploring the issue and would get back to the committee on.

Senator BREAUX. If you have some recommendations, we would appreciate hearing them.

I take that with these twelve launch barges, if they would be allowed to be utilized, that the tow boat, the tug boat, which is an oceangoing tug boat that tows those barges to the site where this rig would be deposited, would be a Jones Act vessel?

Mr. PECQUEX. Certainly we would hope so.

Senator BREAUX. Mr. Tanzberger, you talked about some of the problems and it looks like currently we really have a mishmash out there with regard to dredge material. In other words, if you are doing some dredging work on the OCS and in the EEZ outside the three mile limit, and you are taking the dredged material to a disposal site that is also outside of the three mile limit and dumping it, that is a loophole in the law right now.

That could theoretically and in fact be done by a foreign operation, although it is within the 200 mile zone of the United States.

Mr. TANZBERGER. Under the existing law, that is correct.

Senator BREAUX. Is it not true also that outside of the three mile limit dredging activity could be done by a foreign operation, foreign built, and the dredged material could then be brought to the shore of the United States, say for beach restoration, and it could actually be deposited on the shore of the United States by a foreign operation?

Mr. TANZBERGER. That is correct.

Senator BREAUX. That is not from a point in the U.S. under the current interpretation?

Mr. TANZBERGER. That is correct.

Senator BREAUX. So your opinion is that our legislation would in effect close those various loopholes, and that any dredging activity within the 200 mile economic zone of the United States would in fact be required to be a U.S. operation?

Mr. TANZBERGER. By defining material that it has value, then the point to point issue and the examples you used as far as beach nourishment would accomplish what you said, that is true.

Senator BREAUX. Mr. Albers, I think you said in your testimony that you all had applied to Customs for a ruling or that agents for the foreign shipyard that ultimately won this contract award sought and received confirmation from the U.S. Customs Service

that their barges built in the Singapore yard were not subject to the requirements of the Jones Act because, number one, the 106 mile site that EPA had designated to dump the material, fell outside of the three mile limit, and because the material had no value.

Now, are all of you comfortable with the way the language is worded in the legislation that we cover both of those items, that number one, we clearly spell out that, even though it is not within three miles and it is outside of three miles, that you cover it within the 200 mile zone; and that secondly, you are also covered because we are stating that this "valueless cargo 'is in fact covered?

Mr. ALBERS. Yes, sir.

Senator BREAUX. You know, that is the point I was trying to point out with the previous panel with regard to the fact that we have already extended that three mile line out to 200 miles with regard to OCS activities, oil and gas operations, with regard to fishing operations, but they have not done it with regard to this.

And this legislation is designed to do that. Okay.

On the launch barge provisions, Mr. Albers, when your associate, Ms. Wilson, had commented to Customs back in August of last year, I take it that you said that you were not unsympathetic to the problem where you have an actual situation where there are no U.S.-built launch barges of this capacity.

And I take it that your suggestion was that, instead of Customs doing it by petition, if the person who would like to use these twelve barges faces a substantial economic problem, then the appropriate avenue to redress that matter is through a Congressional initiative.

And of course, that is why we are here, through a Congressional initiative in the House and the Senate to say that, okay, there is a substantial economic problem, there are no launch barges of that size being built, none contracted for and none are planned, and the simple fact is that if we do not allow these to be used all of the work for the construction of the platforms is simply going to be done somewhere else in foreign shipyards, and then they could use the foreign barges to build the foreign-built equipment and deposit it at the locations.

And so, is what we are doing with the legislation consistent with what you were trying to spell out when you filed your statements with the Customs Service?

Ms. WILSON. Yes, it is consistent. We see this as a unique situation and, as you pointed out in your opening statement, different than other requests for waivers.

Senator BREAUX. Well, ladies and gentlemen, we thank you.

Other members of the committee, of course, have permission to submit questions, which we would ask that you consider and promptly respond to at the appropriate time. I thank you very much.

Mr. Blomberg, thank you for coming.

Senator BREAUX. Our next panel will consist of: James E. Franklin, Vice President and General Manager, Fabrication and Shipyard Operations, McDermott Marine Construction; Kenneth Dupont, Vice President, Avondale Shipyards, Inc.; Leon C. Heron, Jr., Executive Vice President and General Manager, Gulf Marine Fabricators, Inc.; The Honorable Cedric S. LaFleur, Mayor, City of

Morgan City, Louisiana; and John J. Stocker, President, Shipbuilders Council of America.

STATEMENT OF JAMES E. FRANKLIN, VICE PRESIDENT AND GENERAL MANAGER, FABRICATION AND SHIPYARD OPERATIONS, McDERMOTT MARINE CONSTRUCTION

Mr. FRANKLIN. Thank you, Mr. Chairman and members of the subcommittee.

My name is James E. Franklin, Vice President and General Manager——

Senator BREAUX. Let me ask you, Mr. Franklin, to—and I did not mention it for this panel—that if you can, we would like you to summarize your testimony. Then we will proceed to questions.

Mr. FRANKLIN. I am James E. Franklin, Vice President and General Manager of Fabrication and Shipyard Operations, McDermott Marine Construction, a division of McDermott, Incorporated.

I am grateful for the opportunity to appear before the subcommittee on McDermott's behalf. I understand that my full statement will appear in the record of this hearing.

McDermott is an energy service company headquartered in New Orleans, and it has a shipyard and fabrication yard in Morgan City, Louisiana, which builds large tugs, dredges, barges, oceanographic research vessels, oceangoing work vessels, and offshore platforms.

McDermott supports the efforts of S. 1988 to ensure the Jones Act applies to the transportation of municipal sewage, sludge, and dredge material for disposal at sea. The disposal of such sludge and dredge material at sea promises to increase as available landfill sites are used to capacity, and this development will generate demand for large new barge construction.

In order to make it brief, I will proceed on into the launch barge matter. Prior to 1984, the U.S. Customs Service permitted foreign-built launch barges to carry platform jackets used for offshore oil and gas production from U.S. fabrication yards to a point on the high seas where the jacket was launched from the launch barge and then towed by coastwise and certified vessel to its installation site on the outer continental shelf.

This procedure is known as a dual mode movement. In November 1984, the U.S. Customs Service, acting in response to a protest lodged in a transportation industry dispute, but without any statutory change, reversed its earlier ruling and prohibited such dual mode movements.

Consequently, the rule made in the transportation industry case was applied to the construction industry and in essence required that coastwise certified launch barges be used to carry platform jackets from U.S. fabrication yards to offshore launching sites.

In a nutshell, the benefits that would flow from enactment of the launch barge proviso in S. 1988 are as follows:

Number one, it permits U.S. fabricators to compete. No capable U.S.-built deepwater launch barge is in existence and, for the reasons set forth, no new American construction of such barge is foreseeable. Without the limited Jones Act exemption contained in the

proposed amendment, American platform jacket fabricators could lose virtually all future deepwater projects to foreign competitors.

Number two, reliance by U.S. fabricators on previous Customs ruling. Prior to the 1984 Customs ruling, domestic marine fabricators were free to use foreign-built barges in movements to OCS sites, and the thrust of the proposed amendment is simply to permit continuation of the use in coastwise movements of these large foreign-built barges.

Number three, save U.S. jobs. The proposed amendment promotes American employment by keeping jobs from being lost to foreign platform jacket fabrication competitors. Jobs are urgently needed in Louisiana and Texas, where the overall current level of unemployment is at an all-time high.

Number four, the amendment is consistent with Jones Act policy. The proposed amendment promotes employment in U.S. shipyards and fabrication yards. American shipyards will build new supply and crew vessels to support deepwater platform projects awarded to U.S. fabricators.

The proposed amendment benefits certain foreign-built vessels. Basically, those vessels were entitled to access to U.S. waters by virtue of earlier service rulings. Moreover, the exemption is limited to a small number of vessels which must be U.S.-flagged to qualify.

The reversal by the U.S. Customs Service of its earlier rulings allowing use of foreign-built launch barges for dual mode movement and the uncertainty of whether the old rule will be reinstated and, if so, for how long points to the need for a legislative solution contained in S. 1988.

Absent enactment this year of S. 1988, it is almost inevitable that U.S. OCS leaseholders will be forced to order their platform jackets from foreign fabricators who, without any coastwise restrictions, are permitted to transport to and launch platform jackets from U.S. offshore sites.

In summary, Mr. Chairman, we applaud you for your leadership in introducing S. 1988 and hope that it will soon be enacted into law.

[The statement and questions and answers follow:]

STATEMENT OF JAMES E. FRANKLIN
VICE PRESIDENT AND GENERAL MANAGER,
FABRICATION AND SHIPYARD OPERATIONS
MCDERMOTT MARINE CONSTRUCTION
MORGAN CITY, LOUISIANA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, my name is James E. Franklin and I am Vice President and General Manager, Fabrications and Shipyard Operations of McDermott Marine Construction, a Division of McDermott, Incorporated. I am grateful for the opportunity to appear before the Subcommittee on McDermott's behalf to speak in favor of S. 1988, a bill that would extend the U.S. coastwise laws to the transportation of municipal sewage sludge and dredged material to any point within a 200-mile limit. S. 1988 would permit use of certain foreign-built launch barges with a carrying capacity in excess of 12,000 long tons to transport platform jackets from U.S. fabrication yards to the OCS.

McDermott is headquartered in New Orleans. We are one of the world's largest energy service companies. McDermott designs, constructs, and installs offshore platforms, marine pipelines, and other facilities used offshore in the drilling and production of oil and gas. McDermott has a shipyard in Morgan City, Louisiana, which builds large tugs, dredges, barges, oceanographic research vessels, and oceangoing work vessels.

Municipal Sewage Sludge and Dredged Material

McDermott supports the bill's provision to make the transportation of municipal sewage sludge and dredged materials subject to the Jones Act (46 U.S.C. §883), which prohibits foreign-built vessels from carrying merchandise between coastwise points. The inclusion of the transportation of sludge and dredged material within the Jones Act would reserve for American shipyards a line of work that promises to be quite significant in the decades ahead. McDermott anticipates that American cities and towns increasingly will turn to ocean dumping for disposal of their sewage sludge. New York City already is committed to ocean disposal, and the chances are quite good that other cities will follow this path in the future. Cities which undertake ocean dumping of sewage sludge obviously will need barges to carry the sludge from treatment facilities on shore to the disposal site. In the case of New York, for example, the City already has contracted to purchase four 15,000-ton oceangoing barges, at a price in excess of $20 million.

Scope of Current Law

An increase in ocean disposal of municipal sewage sludge and dredged materials will provide significant new work for shipyards. The question before the Subcommittee is

whether those shipyards will be American or foreign. The United States has a long-standing policy of reserving our coastwise traffic to vessels built and documented in the United States. However, the current version of the coastwise law involving merchandise (46 U.S.C. §883) does not require that U.S.-built barges be used to carry municipal sludge or dredged materials to offshore disposal sites.

There are two reasons why the current law does not cover such transportation. In the first place, the current statute applies only to the transportation of "merchandise" -- a term the Customs Service traditionally has interpreted to cover only things of some value or commercial use. Sewage sludge destined for ocean dumping obviously has no value. Indeed, it has a negative value because the owner will have to spend money to dispose of it. The same is most often true of dredged materials. In the second place, the current statute applies only to transportation from one point in the United States to another such point. Of course, a point will qualify as such a coastwise point if it is a shore point in the United States, or an offshore point within the traditional 3-mile limit. However, ocean dumping sites for sewage sludge certainly will be located beyond the 3-mile limit. This often holds true for dredge spoil as well. For example, the disposal site which New York City is going to use for sludge is 106 miles off the coast. In the recent litigation involving the New York City program, the U.S. District Court in Manhattan dismissed the complaint of various domestic interests against the City's purchase and use of barges built in Singapore. The Court reasoned that the Jones Act did not apply to the City's use of foreign barges because (i) sludge is not "merchandise" and (ii) the dumping site is not a coastwise point. 1/

Competitive Situation

Unless the statute is extended as provided in S. 1988 to cover the ocean disposal of sewage sludge, virtually all of the new construction of new barges to carry the sludge

1. See 106 Mile Transport Associates, et al. v. Koch, et al., 80 Civ. 7190 (JMW), U.S. District Court for the Southern District of New York, March 27, 1987 Memorandum Opinion and Order, pp. 14-18. The opinion ruled that the plaintiffs lacked standing to assert the Jones Act claim and then went on to address the merits of the questions involving "merchandise" and coastwise points.

will be contracted to foreign shipyards. The reason for this prediction is quite simple --foreign shipyards face considerably lower costs than do American shipyards, so they can deliver barges at a lower price. For example, in the case of New York City, McDermott was the low domestic bid, at about $28 million, but a Singapore shipyard bid at $21 million and a Brazilian shipyard bid at $23 million. Five other American shipyards submitted bids which ranged from about $29 million to $56 million. Neither McDermott nor any other American shipyard known to us can underbid all foreign shipyards for work of this kind. Therefore, if the law continues to permit the use of foreign-built barges to carry sewage sludge generated by American cities, virtually none of the new barge construction will go to American shipyards.

Barges used to transport dredged material beyond the 3-mile limit would also be similarly affected.

On the other hand, if Congress acts to reserve this trade for U.S.-built vessels, McDermott and other American shipyards will be able to compete for new barge construction. Such an opportunity would be very important for our Morgan City facility, which has been hard hit by the downturn in fabrication work for the oil industry caused by the current low level of petroleum prices.

Launch Barge Issue

Turning now to the launch barge issue, S. 1988 contains a proviso stating that "the transportation of any platform jacket in or on a launch barge shall not be deemed transportation subject to this section if the launch barge has a carrying capacity of twelve thousand long tons or more, was built or under construction as of the date of enactment of this provisio, and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a barge of lesser capacity."

This provision will guarantee U.S. offshore platform fabricators a chance to compete for deepwater platform work on our own American OCS. Absent enactment of this provision, our foreign competitors will be guaranteed the work and as a matter of law, as interpreted by a 1984 U.S. Customs ruling, we will be frozen out of the deepwater platform business.

4

The Problem Posed by the Customs Ruling

Prior to 1984, the U.S. Customs Service permitted foreign-built launch barges to carry platform jackets used for offshore oil and gas production from U.S. fabrication yards to a point on the High Seas where the jacket was launched from the launch barge and then towed by a coastwise certified vessel to its installation site on the Outer Continental Shelf. This procedure is known as dual mode movement. In November 1984, the U.S. Customs Service, on its own initiative in response to a protest lodged in a transportation industry dispute, but without any statutory change, reversed its earlier ruling and prohibited such dual mode movements. Consequently, the ruling made in the transportation industry case was applied to the construction industry and, in essence, required that coastwise certified launch barges be used to carry platform jackets from U.S. fabrication yards to offshore launching sites.

The problem this ruling has presented for the U.S. offshore construction industry is that existing coastwise certified launch barges are only capable of transporting and launching platform jackets up to a size of 5,000-7,500 long tons. Deepwater platforms range in size up to 30,000-60,000 long tons. Existing foreign-built launch barges which were previously authorized for dual mode transportation are capable of carrying the larger deepwater platform jackets, but are prohibited from doing so under the Customs ruling. Building new, larger launch barges in the U.S. is prohibitively expensive.

Unless the Customs Service ruling is reversed as provided by S. 1988, American leaseholders on the Outer Continental Shelf will be forced to order their deepwater platform jackets from foreign fabricators, which are permitted to transport and launch such jackets from foreign-built launch barges, not subject to coastwise trading laws. This would result in a major loss of the market for offshore platform jackets to foreign fabricators, particularly in the Gulf of Mexico where each of the thousands of existing offshore platforms has been fabricated in the U.S.

The economic reasons for the lack of U.S.-built launch barges are fairly obvious and will not disappear soon. The high cost of a launch barge is a formidable deterrent to domestic construction, since the cost of construction is [illegible] greater in U.S. shipyards than in foreign

shipyards. A large launch barge is a highly specialized and very expensive vessel. 2/ The Jones Act simply does not apply to the movement of a jacket from a foreign fabrication facility to a coastwise OCS site, so foreign marine fabricators have no need to use more expensive U.S.-built barges in such movements.

Foreign marine fabricators already enjoy some very substantial cost advantages vis-a-vis American companies, advantages which can be great enough to enable them to underbid American fabricators for OCS projects. Indeed, the oil producers have awarded 11 of the last 13 major platform projects off the U.S. West Coast to Japanese or Korean fabricators. Absent a limited Jones Act exemption, the effect of the 1984 Customs ruling is to saddle American marine fabricators with another very significant cost disadvantage.3/

This disadvantage, in combination with the others, would serve to ensure that future deepwater platform jackets would be awarded to foreign marine fabricators -- a result which would be detrimental because it would limit American opportunities to participate in this technological frontier. Furthermore, application of the rule of the 1984 Customs ruling is extremely unlikely to generate new construction of large launch barges by American shipyards, since their only potential customers (i.e., American marine

---

2. The barge must be buoyant and strong enough to bear the enormous weight of the jacket, and it must have a very high degree of stability in order to carry the jacket safely through rough seas and bad weather and in order to provide a stable surface from which to slide the jacket into the water. The barge has to come into shallow water for the onloading of the jacket, a function which calls for a shallow draft. For reasons such as these, building a large launch barge is a technically demanding and very expensive task.

3. The launching of a large jacket is an infrequent event, so a marine fabricator is not able to spread the cost of the launch barge over any great number of jobs. Also a launch barge is unlikely to have many practicable alternative uses between launches, so the barge owner cannot easily spread its cost over many jobs other than jacket launches. These factors serve to magnify the portion of the cost of any platform jacket installation which is attributable to the use of the launch barge.

fabricators) already are under severe competitive pressure from foreign concerns.4/

In summary, Mr. Chairman, the launch barge proviso contained in S. 1988 is needed for the following reasons:

(1) Permits U.S. Fabricators to Compete

The primary reason for the proposed amendment is that domestic marine fabricators need to be able to use large launch barges in order to be able to compete for deepwater platform projects. No capable U.S.-built deepwater launch barge is in existence, and, for the reasons set forth above, no new American construction of such a barge is foreseeable. Without the limited Jones Act exemption contained in the proposed amendment, American platform jacket fabricators could lose virtually all future deepwater projects to foreign competitors.

(2) Reliance by U.S. Fabricators on Previous Customs Ruling

Equity compels some relief from the 1984 Customs ruling. American marine fabricators acquired large launch barges, at considerable cost, and used them in accordance with the principles of the pre-1984 rulings cited above. The reversal of position in the 1984 Customs ruling was not precipitated by any legislative change or judicial decision. Prior to the ruling domestic marine fabricators were free to use foreign-built barges in movements to OCS sites, and the thrust of the proposed amendment is simply to permit continuation of the use in coastwise movements of these large foreign-built launch barges.

(3) Saves U.S. Jobs

The proposed amendment promotes employment by keeping jobs from being lost to foreign platform jacket fabricator competitors. Jobs are urgently needed in Louisiana and Texas where the overall current level of unemployment is at an all-time high.

(4) Amendment Consistent with Jones Act Policy

The proposed amendment promotes employment in U.S. shipyards and fabrication yards. American shipyards will [illegible] barges of the kind of specialized barge needed to launch deepwater jackets are being constructed in the U.S. The only construction of new launch barges with a capacity over 20,000 tons is occurring in Korea, where Heerema has [illegible] for the construction of an 850-foot barge.

build new supply and crew vessels to support deepwater platform projects awarded to U.S. fabricators. The proposed amendment benefits certain foreign-built vessels, basically those vessels which were entitled access to U.S. waters by virtue of earlier Service rulings. However, the exemption hardly would deprive American shipyards of new work which they otherwise would enjoy, since domestic construction of large launch barges is financially impracticable in light of the severe competitive pressure from foreign marine fabricators. Moreover, the exemption is limited to a small number of vessels, which must be U.S. flagged to qualify.

The reversal by the U.S. Customs Service of its earlier rulings allowing use of foreign-built launch barges for dual mode movement and the uncertainty of whether the old rule will be reinstated and, if so, for how long, points to the need for the legislative solution contained in S. 1988. The proposed launch barge proviso would produce only a minimal effect on the market conditions which existed during the time the Customs rulings allowed foreign-built launch barges to be used to transport platform jackets under the dual mode procedure from U.S. fabrication yards to offshore sites.

Absent enactment this year of S. 1988, it is almost inevitable that U.S. OCS leaseholders will be forced to order their platform jackets from foreign fabricators who, without any coastwise restrictions, are permitted to transport to, and launch platform jackets from U.S. offshore sites.

As we earlier stated, S. 1988 would also stimulate domestic construction of barges used for the transportation of sewage sludge and dredged material.

Mr. Chairman, we deeply appreciate your leadership in introducing S. 1988 and are hopeful of its early enactment into law.

82-999 O - 88 - 3

McDermott
incorporated

Marine Construction,
Offshore, Fabrication and
Shipyard Operations

P. O. Box 188
Morgan City, Louisiana 70381
(504) 631-2561

February 22, 1988

The Honorable Ernest F. Hollings
Chairman
Senate Committee on Commerce,
Science and Transportation
125 Russell Bldg.
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for scheduling an early hearing on S. 1988.

We are pleased to provide you with answers to your questions regarding the launch barge proviso of that legislation. We are hopeful that after reviewing our answers to your questions you will schedule a full committee mark-up in order to report out S. 1988. We hope S. 1988 will soon become law.

If you have any further questions, please feel free to get back in touch.

Sincerely yours,

James E. Franklin

Senator Hollings' Question #1

It has been said that equity compels some relief from the 1984 Customs Service ruling.

As to the dual-mode movement of platform jackets, could you give examples of how U.S. fabricators changed their position in reliance on the Customs earlier favorable ruling in 1983, that dual-mode movements were not subject to the Jones Act. For example, in reliance on that Customs ruling, how many foreign-built launch barges are acquired or otherwise arranged for; and how many platform jackets were actually transported, or arranged to be transported?

Answer:

The applicability of Section 27 of the Merchant Marine Act of 1920 (Jones Act) to the offshore construction industry has been uncertain for an extended period of time. In 1953 §4(a)(1) of the Outer Continental Shelf Lands Act (OCSLA) "extended" all U.S. laws to "fixed structures" erected on the Outer Continental Shelf (OCS) for resource exploitation purposes. All points on the OCS are outside the U S. territorial three-mile limit. The OCSLA made no explicit reference to the Jones Act and only after a few years did the Customs Service make public its determination that mobile drilling rigs were OCSLA fixed structures which should be treated as coastwise points "during the period when they are secured to or submerged onto" the OCS seabed. See T.D. 54281(1), an abstract of a December 11, 1956 ruling. The Customs Service thereafter applied the same principle to drilling platforms, artificial islands and similar structures. However, the Service did not treat a structure as a coastwise point until it was "attached" (i.e., was already constructed), so it did not treat as a coastwise point "a location where a platform or other structure was being constructed." See C.S.D. 81-95, Control No. 104880 JL, October 22, 1980, referring to the pre-1978 version of the OCSLA.

In 1978, Congress amended the OCSLA to refer to "all installations and other devices permanently or temporarily attached to the seabed", a change which the Service viewed as showing an intent to broaden the scope of U.S. jurisdiction under OCSLA §4(a)(1). In C.S.D. 81-95, the Service ruled that a mere buoy attached to the OCS seabed to mark a future drilling site was a coastwise point, as was a well casing with attendant accessory systems when submerged onto the OCS seabed. Not until this C.S.D. 81-95 did a published ruling make clear that the Service viewed as a

coastwise point, not only an attached rig or constructed platform, but also a mere marker buoy or an entirely submerged well casing. 1/

C.S.D. 81-95 thus marked a significant expansion of the places deemed to be coastwise points by virtue of OCSLA §4(a)(1). Until then, as noted in C.S.D. 81-95, the Service did not treat as coastwise a location where a platform was being constructed. Therefore, until that time, the launching of a platform jacket did not raise Jones Act problems since the delivery site overlying a fixed bottom structure would not have been deemed coastwise. Prior to that time, therefore, offshore construction companies such as McDermott were free to use foreign-built launch barges for OCS projects in reliance upon the Jones Act and the OCSLA (as enacted by Congress and interpreted by the Customs Service).

The Service's interpretation of the 1978 OCSLA amendment made the Jones Act more problematic for offshore construction by expanding the universe of "coastwise" points. However, this change did not immediately prevent the use of foreign-built launch barges on account of a separate development of legal doctrine. As early as April of 1977, the Service took the position that the Jones Act did not apply to the overall movement of an item between two coastwise points where the item was both towed in the water and carried on a vessel, provided that the point intermediate between the towing phase and the carrying phase was a non-coastwise point. See Control No. 102750 PC, April 13, 1977, involving the movement of barges (first towed and then carried) between the State of Washington and New York. The theory of the ruling was that the movement of the item as "merchandise" within the Jones Act was between New York and Vancouver, British Columbia, the non-coastwise point where the towing turned into carriage. Thereafter the Service applied the same theory to several other dual-mode movements. See C.S.D. 80-96, Control No. 104027 MKT, August 29, 1979, carriage/towing of mobile drilling platform; Control No. 105692 HS, July 8, 1982, carriage/towing of floating drydock; Control No. 105881 PH, November 8, 1982, carriage/towing of jackup drilling rig; Control No. 106528 HS, December 14, 1983, carriage/towing of a platform jacket by McDermott.

1/ The Service later reversed its position with respect to marker buoys. See C.S.D. 84-96, 106670 DHR: June 4, 1984.

The Service did not reverse its position with respect to dual-mode movements until it issued C.S.D.85-9, Control No. 107060 PH, November 21, 1984, a ruling not published until January 30, 1985. Thus, from the 1953 enactment of the OCSLA until 1985, McDermott was free to use a foreign-built barge to launch jackets on the OCS.

In fact, in reliance upon the legality of such transportation, since 1974 American fabricators have transported thirteen platform jackets from their fabrication yards to U.S. offshore locations ranging in water depths of 400 to over 1000 feet. Of the thirteen, McDermott fabricated and transported six.

Another important element of reliance has been McDermott's investment in U.S.-based fabrication facilities. Investment in such facilities makes economic sense only as long as a U.S.-fabricated jacket may be installed on the OCS without violating the Jones Act. 2/ Prior to 1985 McDermott made substantial investment (in excess of $30 million) in reliance upon the current interpretation of the Jones Act and the OCSLA, an interpretation which (until C.S.D.81-95) permitted the use of a foreign-built barge to launch any jacket for OCS installation and which (until C.S.D.85-9) permitted the use of a foreign-built barge for such a launching if the overall movement were dual-mode.

As stated in our testimony, however, in order to qualify to bid for fabrication of a deeper water offshore platform jacket project, we as fabricators, are required to demonstrate that we have access to a launch barge which is capable of carrying and launching the platform jacket to be ordered. If the transportation is to take place between two coastwise points in the United States, use of the foreign-built launch barges would be prohibited under the 1984 Customs ruling.

2/ The penalty for violating the Jones Act is forfeiture of the "merchandise" or a civil monetary penalty up to the value of the merchandise. In the case of a deepwater platform jacket, the potential civil penalty would be millions of dollars.

Prior to the 1984 Customs ruling, as indicated at length above, McDermott relied upon its judgement, the judgement of its customers, and the consistent position of the Customs Service, that foreign-built launch barges were legally permissible to be used in dual-mode transportation of platform jackets.

Reliance on the 1983 Customs Service ruling granted to McDermott (Control #106528 HS) and prior rulings, as indicated above, made it possible for McDermott to be able to qualify to bid on deeper water platform jacket projects. Following the 1983 Customs Service ruling, McDermott evaluated, estimated and submitted a proposal for design, fabrication, transportation and installation of a deeper water project in the Gulf of Mexico during the period 1983-1985 in reliance on the ruling, but the project, including transportation work, was awarded to competitors in the United States.

In sum, the application of the Jones Act to OCS construction has followed an erratic path. As a practical matter, the Jones Act was not problematic at all with respect to launching jackets until the 1978 OCSLA amendment (as interpreted in C.S.D. 81-95). Even then the Jones Act was not a barrier to a dual-mode movement using a foreign-built launch barge until the Service abruptly reversed itself in C.S.D. 85-9. This administrative development -- which threatens the ability of any U.S.-based fabricator to obtain deepwater jacket construction work -- was not occasioned by any change in either the Jones Act or the OCSLA. McDermott submits that such a serious burden on American competitiveness should be the result of deliberate Congressional action rather than administrative fiat. Therefore, Congress should restore the ability of U.S. fabricators to move jackets from U.S. fabrication yards to OCS offshore coastwise points on foreign-built launch barges by enacting S. 1988.

Senator Hollings' Question #2

It has been said that enactment of the launch barge provision will guarantee U.S. offshore platform fabricators a chance to compete for deepwater platform work on the U.S. Outer Continental Shelf.

Wouldn't the launch barge exemption also enable these barges also to operate closer into the U.S. shore than the Outer Continental Shelf. In other words, doesn't this provision affect more than deepwater platform work?

Answer:

Our understanding of the intent of the launch barge proviso is to exempt from Section 27 of the Merchant Marine Act of 1920 twelve existing foreign-built launch barges with carrying and launch capacities of 12,000 or greater long tons for the purpose of transporting platform jackets from fabrication yards in the United States to offshore locations so long as no American built launch barge in existence on the date of enactment is capable of carrying and launching the platform jacket to be transported. To the best of our knowledge there is no U.S. launch barge in existence capable of carrying and launching a platform jacket heavier than 6300 long tons.

We understand the intent of the launch barge proviso in S. 1988 is to permit platforms which are too large to be transported on U.S.-built launch barges to be transported on foreign-built launch barges from U.S. shore based locations to any offshore locations. The intent of the proviso, as we understand it, also is to enable the foreign-built launch barges to haul platform jackets from fabrication yards in the United States to wherever they are destined offshore, regardless of any predetermined depths, or distance from shore.

The real issue, as we understand it, is the weight of the platform jacket. If it weighs more than 6300 long tons, then one of the twelve existing foreign-built launch barges will be needed to transport and launch it.

As a general rule, a number of factors influence platform jacket design and therefore its weight: (1) water depth, (2) stability of the underlying seabed, (3) how many production wells will be drilled from the completed platform (the range could easily be 8-60 wells), (4) the weight of the deck section which is dependent upon its design which

Answer to Senator Hollings Question #2
Page 2

relates to the range of equipment to be installed and the overall functions to be performed by the platform system. Although there is a rough, but by no means uniform, correlation between water depth and distance from shore, there is no predictable standard for predetermining platform weight as either a function of water depth or distance from shore. Hence, regarding the issue of transportation of platform jackets, the weight of the jacket is the most important factor. Transportation of platform jackets in excess of 6,300 long tons require foreign-built launch barges.

In a nutshell, S. 1988 affects only those platform jackets whose weight exceeds 6,300 long tons, regardless of the water depth of their installation site and its distance from shore.

McDermott
INTERNATIONAL

Marine Construction, Offshore, Fabrication and Shipyard Operations

P.O. Box 188
Morgan City, Louisiana 70381
(504) 631-2561

February 22, 1988

The Honorable Daniel K. Inouye
722 Senate Hart Bldg.
Washington, D. C. 20510

Dear Senator Inouye:

We are most appreciative of the support for S. 1988 you expressed in your opening statement at the Commerce Committee hearing on January 28. We are hopeful that our enclosed answers to your three questions will persuade you that the launch barge proviso contained in S. 1988 is clearly in the public interest.

If you need further information, or we can be of further assistance to you, please feel free to get in touch.

Sincerely yours,

James E. Franklin

James E. Franklin

Senator Inouye's Question # 1

In March 1984, McDermott testified before a House Subcommittee that as of then it had not been adversely affected by the Customs Service's ruling with respect to the Jones Act restriction on the use of foreign-built launch barges.

Has McDermott been adversely affected since then?

Answer:

On March 21, 1984, Robert D. Miller, Vice President of Domestic Operations of McDermott Inc., testified before the House Subcommittee on the Panama Canal and the Outer Continental Shelf that:

> To date, McDermott has not encountered a situation where this Customs interpretation has restricted its utilization of particular launch barges. Obviously, however, there is no assurance that McDermott will be so fortunate in the future and in fact, we are very concerned that the ever-evolving technical advances in oil and gas drilling methods will make it likely that we will have to place a permanent or temporary attachment to the seabed at the launching site. If this need does arise, as is very likely, statutory restrictions existing in the Outer Continental Shelf Lands Act will adversely affect us. Hence our support for a solution to this complex problem.
>
> It is ironic that our foreign competitors do not operate under the same restrictions that we do (because they build the jackets abroad and haul them to the installation site and hence are not transporting between U.S. coastwise points) and I might note that the number of foreign competitors and their aggressiveness is increasing rapidly.
>
> So while the Jones Act was intended to protect U.S. maritime and shipbuilding interests, we find that as applied to our situation, it is having the very opposite effect because our foreign competitors are perfectly free to use foreign-built barges. We are not free to use foreign-made barges if there is even a temporary attachment to the seabed at the installation site.

In this testimony, Mr. Miller was referring not to the Customs Service position on dual-mode movements, but to the

Answer to Question #1, Senator Inouye continued

position embodied in C.S.D.81-95, to the effect that an OCS location would be deemed a coastwise point if a marker buoy were attached to the seabed or if a well casing were submerged onto the seabed.

At the time of Mr. Miller's testimony, dual mode transportation was fully authorized by the U.S. Customs Service. But literally eight months later, on November 21, 1984, the U.S. Customs Service reversed its earlier rulings and ruled that dual-mode transportation was not permitted under the Jones Act. (C.S.D. 85-9, Control No. 107060 P.H.)

As stated in Mr. Franklin's testimony before the Senate Committee Committee on January 28, 1988:

> The problem this ruling [The Nov. 21, 1984 U.S. Customs Service ruling] has presented for the U.S. offshore construction industry is that existing coastwise certified launch barges are only capable of transporting and launching platform jackets up to a size of 5,000-7,500 long tons. Deepwater jackets range in size up to 30,000-60,000 long tons. Existing foreign-built launch barges which were previously authorized for dual mode transportation are capable of carrying the larger deepwater platform jackets, but are prohibited from doing so under the Customs ruling. Building new, larger launch barges in the U.S. is prohibitively expensive.
>
> Unless the Customs Service ruling is reversed as provided by S. 1988, American leaseholders on the Outer Continental Shelf will be forced to order their deepwater platform jackets from foreign fabricators, which are permitted to transport and launch such jackets from foreign-built launch barges, not subject to coastwise trading laws. This would result in a major loss of the market for offshore platform jackets to foreign fabricators, particularly in the Gulf of Mexico where each of the thousands of existing offshore platforms has been fabricated in the U.S.

Senator Inouye's Question #2

If the need for the launch barge exemption is to enable U.S. platform fabricators to compete for business on the Outer Continental Shelf, couldn't S. 1988 be more narrowly drafted to exempt foreign-built launch barges only when they are transporting platform jackets on the Outer Continental Shelf?

Answer:

Our understanding of the launch barge proviso is that it exempts from Section 27 of the Merchant Marine Act of 1920 twelve existing foreign-built launch barges with carrying and launch capacities of 12,000 or greater long tons for the purpose of transporting platform jackets from fabrication yards in the United States to offshore locations so long as no American built launch barge in existence on the date of enactment is capable of carrying and launching the platform jacket to be transported. To the best of our knowledge, there is no U.S. launch barge in existence capable of carrying and launching a platform jacket heavier than 6300 long tons. In light of this interpretation, no further narrowing of the scope of this proviso would seem necessary, as the exemption granted by S. 1988 pertains to the transportation of platform jackets weighing in excess of 6300 long tons.

Senator Inouye Question #3

Representatives of Shell Oil Company have told the Committee staff that it has not yet made a decision whether to develop its oil drilling project "Popeye" on the Outer Continental Shelf. And even if it decides to develop it, it does not know if it will use a U.S. platform fabricator, even if S. 1988 is enacted.

Could you tell the Committee what the current actual need is, as opposed to a speculative or possible need, for any launch barges of 12,000 long tons or over for projects on the Outer Continental Shelf?

Answer:

As the shallow water fields become depleted and new reservoirs are more difficult to find and produce, the trend in recent times has been toward the deeper water projects. The total development cost of the deeper water projects can be as high as $400 million, which cost information is considered highly proprietary and is protected from disclosure until bids have been opened and awards are made. Consequently, the lease operators protect the confidentiality of such information and only make public the plans to drill, design or fabricate platforms when it is time to call for the bids. Shell's announcement that a decision to develop its oil drilling project "Popeye" on the Outer Continental Shelf has not yet been made or formally announced is an example of the way lease operators protect the proprietary nature of their offshore production plans.

McDermott is presently fabricating two deeper water platform jacket projects for the Gulf of Mexico, one for a customer in 481' water depth with a launch weight of 9,500 long tons, and one for another customer in 622' water depth and weighing 7,600 long tons. We need to use the foreign-built launch barges with a launch capacity considerably in excess of 6,300 long tons to deliver the jackets, which we hope to complete this year. There are no alternative means available to transport the jackets.

McDermott is actively following the progress of several more deeper water development projects. The current price of oil puts a heavy burden upon the lease operators to hold down costs, but we expect demand for offshore oil to continue in the foreseeable future and most of the projects to be eventually developed.

As stated in our testimony, absent the legal authority to transport these new deeper water platforms on foreign-built barges, the lease operators will be forced to go abroad to have their platforms fabricated.

McDermott
INCORPORATED

Marine Construction,
Offshore, Fabrication and
Shipyard Operations

P. O. Box 188
Morgan City, Louisiana 70381
(504) 631-2561

February 22, 1988

The Honorable John C. Danforth
497 Russell Bldg.
Washington, D. C. 20510

Dear Senator Danforth:

Thank you for your follow-up question to the hearing on S. 1988 transmitted to us by Bob Eisenbud as follows:

"Please supply a list of the launch barges McDermott owns and the length, launch capacity, date and place built for each such barge. What is your--estimate of the remaining useful life of each such barge?"

Answer: The enclosed letter report to Senator John Breaux, dated January 22, 1988 from Barnett and Casbarian, Inc., lists McDermott's 13 launch barges and the dates each were built. To supplement this report, we note that the Intermac 252 was built in the U.S.A. in 1972 and the Tideland 021 was built in the U.S.A. in 1980.

All of the listed McDermott launch barges have a life expectancy of approximately 25 years, which means that the most recently built, the Intermac 650 built in 1980, is expected to be out of service by about 2005.

We hope this information is responsive to your question and we would be pleased to provide you with any additional assistance you may require.

We are hopeful that you will urge that S. 1988 be enacted into law this year.

Sincerely yours,

James E. Franklin

BARNETT & CASBARIAN, INC.
Engineering & Marine Consultants ● Marine Surveyors
Houston 9039 Katy Freeway, Suite 422 New Orleans
Houston, Texas 77024
Phone (713) 467-6713

January 22, 1988

The Honorable John Breaux
United States Senate
517 Hart Senate Office Building
Washington, DC 20510

Subject: Launch Barge Capacity Study Project

Dear Senator Breaux:

We are pleased to respond to your request for information and our opinion concerning barges existing worldwide that have been built for the special purpose of transporting and launching jacket structures to be used in the extraction of offshore resources (typically oil) and, specifically, their respective capabilities regarding jacket weight they can safely launch. Our staff personnel have designed several launch barges including the KSC-700 and have approved on behalf of Underwriters and the Minerals Management Service the barges and procedures for the launching of virtually every major jacket structure presently installed on the U. S. Outer Continental Shelf.

We point out that the launch capacity of a barge should not be confused with the deadweight cargo carrying capacity as allowed by it's load line. In general, launch barges may be capable of carrying approximately twice the weight they can safely launch. Further, it is difficult and could be misleading to fix an exact number of tons as the launching capacity of a barge as there are a number of strength and structural design factors involved in both the barge and jacket. Assuming two jackets of exactly the same weight but of different structural design, dimensions and configuration, a given launch barge could possibly launch one safely but not the other. The selection and acceptability of a launch barge for any jacket is, therefore, based on a case by case matching of the jacket and barge and not solely on a number designated the launching capability in tons.

The governing factor in any event is stability during launch and the principal influence on stability during launch derives from the width of the barge. In a typical transport and launch the jacket is carried on its side longitudinally on the barge's launching ways and is launched over the stern, which is fitted with rocker beams over which the jacket rotates. In preparing for launch and before cutting away the final securing and restraining devices, the barge is ballasted down by the stern to a predetermined launch angle. This normally submerges a considerable after portion of the barge's deck, thereby reducing the waterplane area and

thus stability. At the moment the jacket rotates over the stern the barge is submerged momentarily much more; a sudden roll tendency or lateral movement when the jacket is partially in the water and partially on the barge could produce disastrous results. Thus, the width of the barge and numerous other factors of both barge and jacket combine to determine the barge's launch weight capability, a figure that is not absolute.

Attached hereto is a list of 40 purpose built launch barges that, to our knowledge, are presently in existence. The jacket launch weight capacities should not be considered fixed absolutely; they are all based on hypothetical jacket specifications and could easily be varied 15% or more.

We sincerely hope the tabulated information and our comments will serve; we will be most pleased to provide further details or clarifications and will welcome any questions that may arise.

Yours very truly,

BARNETT & CASBARIAN, INC.

Clifton Barnett

Clifton Barnett

CB:cj

Attachment

Compiled by Barnett & Casbarian, Inc., Houston

Owner	Name	Length ft	Beam ft	Depth ft	Max Jacket Launch Wt L Tons	Flag	Built Loc., Yr
Brown & Root, Inc	BAL 267	380.0	100.0	25.0	5,900	USA	USA, 80
Brown & Root, Inc	BAL 319	332.0	90.0	20.0	3,100	Panama	Jap, 72
Brown & Root, Inc	BAL 397	300.0	60.0	20.0	3,100	USA	USA, 79
Brown & Root, Inc	BAR 405	300.0	90.0	25.0	2,700	Panama	Nor, 78
ETPM	CBL 102	370.0	100.0	23.0	5,400	Panama	Ger, 78
ETPM	CBL 103	326.3	101.5	20.0	5,400	Panama	Sing, 76
Heerema	MWB-403	400.0	104.8	25.0	6,300	USA	USA, 79
Heerema	H-109	600.4	155.0	38.0	29,500	Panama	Jap, 78
Heerema	H-110	525.0	137.8	35.1	19,600	Panama	Jap, 78
Heerema	H-114	525.0	137.8	35.1	19,600	Netherlands	Neth, 82
Heerema	H-401	400.0	120.0	26.2	9,800	Panama	Jap, 83
Heerema	H-851	853.0	206.7	49.2	58,900	Panama	Kor, 87
Hyundai	B NO. 1006	562.0	154.2	31.2	17,900	S Korea	Kor, 82
Kaiser Steel	KSC 700	700.0	182.0	40.0	40,200	USA	Kor, 85
McDermott	Intermac 252	240.0	72.0	17.3	2,700	Panama	USA
McDermott	Intermac 401	300.0	90.0	21.5	4,400	Panama	Jap, 00
McDermott	Intermac 403	300.0	90.0	21.5	4,400	Panama	Jap, 00
McDermott	Intermac 404	300.0	90.0	20.0	3,100	USA	USA, 76
McDermott	Intermac 502	350.0	80.0	25.0	4,400	Panama	Aus, 68
McDermott	Intermac 503	350.0	80.0	25.0	4,400	Australia	Aus, 69
McDermott	Intermac 504	350.0	60.0	25.0	4,100	Panama	USA, 69
McDermott	Intermac 600	500.0	120.0	33.3	15,000	USA	Jap, 73
McDermott	Intermac 627	580.0	160.0	36.0	22,300	USA	KOR, 78
McDermott	Intermac 650	650.0	170.0	40.0	40,200	USA	Jap, 80
McDermott	Oceanic 91	402.0	90.0	21.5	4,500	USA	USA, 64
McDermott	Oceanic 93	450.0	150.0	30.0	14,700	USA	Jap, 76
McDermott	Tideland 021	240.0	72.0	17.3	2,700	USA	USA
Micoperi	M 41	360.9	96.1	24.6	7,900	Italy	Italy, 74
Micoperi	M 42	404.4	96.1	24.6	7,900	Italy	Italy, 75
Micoperi	M 48	623.4	164.0	37.4	29,500	Italy	Jap, 79
Nippon Steel	Agano	328.0	98.4	23.0	4,900	Japan	Jap, 74
Nippon Steel	Hibiki Maru	344.5	90.0	18.0	2,900	Japan	Jap,
NPCC	HLS-2060	432.6	100.0	26.3	4,900	n/a	Neth, 74
Petrobras	BS No. 3	344.5	78.7	24.6	2,700	Brasil	Bra, 76
Petrobras	BGL 2	500.0	120.0	31.0	15,000	Brasil	Jap, 78
Saipem	Castoro 9	328.0	99.0	22.9	3,600	Italy	Italy, 83
Santa Fe	SF 4000	400.0	100.0	25.0	5,400	USA	Taiwan, 78
Sause Bros.	BAR 396	304.0	90.0	22.0	3,100	USA	USA, 76
Sidmar	Launcher 500	315.0	90.0	19.3	3,100	USA	USA, 82
Yoriganl	Sidn S 15001	360.9	105.0	23.0	4,500	Japan	Jap, 81

Table 1 - Existing Launch Barges

Senator BREAUX. Thank you, Mr. Franklin. And thank you for summarizing.

Kenneth DUPONT. Ken, it is good to have you back.

STATEMENT OF KENNETH DUPONT, VICE PRESIDENT, AVONDALE SHIPYARDS, INC.

Mr. DUPONT. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee:

My name is Kenneth Dupont. I am a Vice President of Avondale Industries, Incorporated, of New Orleans. Mr. Chairman, Avondale supports Senate Bill 1988. Avondale builds ships for the United States Navy, builds barges, constructs large power generation and industrial modules, and fabricates jackets and decks for offshore platforms.

Corporate headquarters are located at our main yard near New Orleans. We have three other yards in the New Orleans area and one near Morgan City, Louisiana. Avondale employs 7,200 workers, with an annual payroll exceeding $113 million.

Avondale has been successful because we know our customers and we know the economics of our business. We and other U.S. offshore fabricators have faced tough competition from foreign fabricators in recent years. Their prices are cheap. To bid successfully, our prices must be lower than the competition.

Avondale is not an offshore platform installation contractor. We do not own any launch barges. For a launch barge to be an economical asset, it must be used regularly on a continuing basis.

Because it takes the production of many offshore fabricators to meet this requirement, launch barges are owned and operated by large international offshore installation contractors with the capability of delivering and installing jackets worldwide.

To bid on heavy deepwater jackets, Avondale must demonstrate the capability to deliver them to their offshore location. This capability exists to Avondale only through the subcontracting of offshore transportation and installation of heavy deepwater jackets to contractors who own foreign launch barges of the proper size.

Avondale Shipyards Division in New Orleans is very capable of building a domestic launch barge of the size required to transport large deepwater platform jackets. The cost to construct such a launch barge is estimated to be between $40 to $50 million.

This cost is almost twice the cost of a similar foreign-built launch barge. Avondale would not build such a barge for its own use because when the high domestic cost of this launch barge would be amortized in our prices for large deepwater platform jackets, Avondale would be noncompetitive in the fabrication industry.

Mineral Management Service and industry projections indicate that the development of offshore oil and gas reserves will continue to occur in the deepwater areas of the Gulf of Mexico outer continental shelf. This is demonstrated by current offshore exploration activity in the Gulf of Mexico, plans of development, and engineering activity by the oil and gas producers.

Although timing and quantity are not precisely known today, the current exploratory planning and engineering activities of the oil

producers clearly indicate that there will be a fair number of deepwater platforms in the Gulf of Mexico.

If Senate 1988 does not become law, these large deepwater platform jackets will be awarded to foreign fabricators and transported on foreign-built launch barges. The award of the large deepwater jackets to foreign fabricators will result in the loss of hundreds of American jobs, the loss of large payrolls to foreign workers, and the loss of significant American material purchases.

Avondale strongly supports the passage of S. 1988, notwithstanding the position taken on this bill by the Shipbuilders Council, of which Avondale is a member. We believe the matter of launch barges is an isolated issue that can and should be separated from the historic intent of the Jones Act.

I would direct the committee's attention to two very basic questions: Should we give American jobs and dollars to foreign firms to fabricate large deepwater jackets, to the detriment of American workers and our economy? Should we allow foreign fabricators to develop their fabrication facilities, obtain sophisticated technology, and gain control of large deepwater jacket fabrications for the Gulf of Mexico outer continental shelf, to the detriment of American fabrication yards and American control?

Your decision regarding Senate Bill 1988 is of extreme importance, and I urge the committee to approve the bill as presented.

Mr. Chairman, thank you for the opportunity to appear before your subcommittee.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question 1. It has been said that enactment of the launch barge provision will guarantee U.S. offshore platform fabricators a chance to compete for deepwater work on the U.S. Outer Continental Shelf.

Wouldn't the launch barge exemption also enable these barges to operate closer in the U.S. shore than the Outer Continental Shelf. In other words, doesn't this provision affects more than deepwater platform work?

Answer. In principle, the water depth determines the weight of a platform jacket. The deeper the water depth the greater will be the amount of steel and weight of the platform jacket. Generally, large heavy platform jackets are installed in deeper water depths. It is unlikely that platform jackets in shallower Gulf of Mexico waters will require large heavy platform jackets.

However, if a shallow water platform were heavy enough to require the use of a foreign built launch barge and the Customs Service rule prevented the use of a foreign built launch barge, then, since there are no American built launch barges available, the oil company requiring the shallow water platform jacket described herein above, may be forced to use a foreign fabrication yard. Therefore, American jobs could be lost regardless of whether the platform jacket is to be installed in shallow or deep water.

Question 2. It has been said that equity compels some relief from the 1984 Customs Service ruling.

As to the dual-mode movement of platform jackets, could you give examples of how U.S. fabricators changed their position in reliance on the Customs earlier favorable ruling in 1983, that dual-mode movements were not subject to the Jones Act. For example, in reliance on that Customs ruling, how many foreign built launch barges are acquired or otherwise arranged for; and how many platform jackets were actually transported, or arranged to be transported?

Answer. Avondale Industries, Inc. does not own launch barges. Avondale relies solely on subcontractors to transport and install platform jackets. Avondale has relied primarily on Heerema (a Dutch company) with U.S. offices in Houston to furnish to Avondale subcontract prices for transportation and installation of platform jackets.

Heerema advises Avondale that since 1984 it has acquired a foreign built launch barge that would be grandfathered under the proposed act. Since 1984, two (2) platform jackets were actually transported in the Gulf of Mexico on Heerema's foreign built launch barges that would be grandfathered under the proposed act.

Heerema also advises Avondale that it did not make its business decision to acquire a launch barge from a foreign shipyard because of Customs earlier favorable ruling in 1983. Heerema's business decision was made based on the economics that it could not obtain transportation and installation business anywhere in the world market by placing in its bid price the amortization of a much higher priced American built launch barge. Furthermore, Heerema bid its fabrication of said launch barge on the world market with pre-qualified bidders. This list included two American shipyards. According to Heerema these American shipyards declined to bid for building this barge when they found out they had to compete on an international basis.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question 1. In March 1984, McDermott testified before a House Subcommittee that as of then it had not been adversely affected by the Customs Service's ruling with respect to the Jones Act restriction on the use of foreign built launch barges. Has Avondale been adversely affected since then?

Answer. Prior to the earlier favorable ruling in 1983 several large deep water platform jackets were installed in the Gulf of Mexico which required the use of foreign built launch barges, i.e. Cognac (1,050 ft. of water) for Shell Oil Company. If the unfavorable Customs Service's ruling had been in effect prior to the transportation and installation of these platform jackets, then the fabrication contractors on the Gulf Coast could have been adversely affected prior to March, 1984.

Avondale has not been the successful bidder on any of the large deep water platform jackets that have been bid since March, 1984. McDermott and Gulf Marine have been the successful contractors of this work. Avondale has not been adversely affected yet because of these awards to American competitors. Avondale considers the term "adversely affected" to mean awards of platform jackets to foreign fabrication yards as opposed to American fabrication yards.

Question 2. If the need for the launch barge exemption is to enable U.S. platform fabricators to compete for business on the Outer Continental Shelf, couldn't S. 1988 be more narrowly drafted to exempt foreign-built launch barges *only* when they are transporting platform jackets on the Outer Continental Shelf?

Answer. S. 1988 must allow foreign built launch barges to transport platform jackets to any location within the offshore water bottoms of the United States. The term Outer Continental Shelf could be narrowly defined in a geographic sense to be only the continental shelf. This would exclude the water bottoms in very deep water adjacent to the geographic definition of outer continental shelf. This exemption would not be acceptable.

Question 3. Representatives of Shell Oil Company have told the Committee staff that it has *not* yet made a decision whether to develop its oil drilling project "Popeye" on the Outer Continental Shelf. And even if it decides to develop it, it does not know if it will use a U.S. platform fabricator, even if S. 1988 is enacted.

Could you tell the Committee what the current *actual* need is, as opposed to speculative or possible need, for any launch barges of 12,000 long tons or over for projects on the Outer Continental Shelf.

Answer. On May 1, 1988, Gulf Marine Fabricators of Ingleside, Texas, will complete the largest platform jacket in the world for Shell Oil Company. Heerema (a Dutch Company) will transport and install this platform jacket under subcontract to Gulf Marine Fabricators. This platform jacket is called Bullwinkle. It is to be placed in 1,350 ft. of water and weights approximately 48,000 tons. Heerema will use it foreign built launch barge recently completed in Korea (H-851) to transport and launch this Shell platform jacket.

During late summer 1988, McDermott Marine Contractors will transport and install a platform jacket for Standard Oil Company (a British Petroleum subsidiary) for 483 ft. of water whose weight is approximately 10,267 tons. McDermott has said it will use its foreign built launch barge Intermac 650 to transport and install this platform jacket.

During late summer 1988, McDermott Marine Contractors will transport and install a platform jacket for Texaco for 622 ft. of water whose weight is approximately 9,951 tons. McDermott has said it will use its foreign built launch barge Intermac 650 to transport and install this platform jacket.

Other deep water platform jackets that are in the planning stage, and may be bid within the next several years are:

Oil company	Platform water depth (ft.)	Gulf of Mexico block or description
Shell Oil Co	2,000	Popeye
Do	1,200	VIOSCA 783 (Tahoe)
Marathon	1,300	Green Canyon 110
Standard Oil Co	1,250	VIOSCA Area Knoll
Tenneco	2,600	Green Canyon 205
Union Oil	1,390	Mississippi Canyon 455

Questions of Senators Danforth, Packwood and Stevens

Question 1. You explain that Avondale would not build a large launch barge in the United States for its own use because of the high cost of building in the United States. Would Avondale purchase a foreign-built launch barge for its own use if such a barge could be used in the coastwise trade?

Answer. Avondale Industries, Inc. does not anticipate entering the offshore platform installation market and therefore would not purchase a foreign-built launch barge. Avondale is not an offshore platform installation contractor. We do not own any launch barges. For a launch barge to be an economical asset, it must be used regularly on a continuing basis.

Because it takes the production of many offshore fabricators to meet this requirement, launch barges are owned and operated by large international offshore installation contractors with the capability of delivering and installing jackets worldwide.

To bid on heavy deepwater platform jackets, Avondale must demonstrate the capability to deliver them to their offshore location. This capability exists to Avondale only through the subcontracting of offshore transportation and installation of heavy deepwater platform jackets to contractors who own foreign launch barges of the proper size.

One installation contractor, Heerema, recently solicited bids on the fabrication of a launch barge from twenty (20) companies worldwide and awarded the contract to a foreign yard thereby demonstrating that American prices are not competitive. Therefore, Avondale would not purchase a foreign built launch barge for our own use as explained in the first paragraph of this answer. Our subcontractor Heerema did in fact purchase a foreign built launch barge which may be used in future transportation and installation of platform jackets to Avondale's benefit when acting as the prime contractor.

Question 2. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S. -owned and -crewed vessels if:

Answer. Avondale is in favor of granting an exemption and to grandfather launch barges in accordance with the provisions of S.1988.

Avondale is not in favor of a U.S. owned provision in S.1988. There are only five (5) U.S. owned foreign built launch barges. Four (4) of these launch barges are owned by Avondale's largest competitor—McDermott, Inc. We believe McDermott, Inc.'s fabrication, transportation, and installation capacity to be greater than the combined capacity of McDermott's three largest competitors; Avondale Industries, Inc., Gulf Marine Fabricators, Inc. and Brown & Root, Inc. This U.S. owned provision ironically by law of Congress would give McDermott a major substantial advantage and a monopoly in the deepwater heavy platform jacket market in the Gulf of Mexico to the detriment of McDermott's competitors.

Avondale does not agree with the argument that the higher prices resulting from such a monopoly will cause American built launch barges to be constructed. The higher domestic cost of these launch barges could not be competitively amortized in prices for large deepwater platform jackets. McDermott's competitors would not be competitive in prices quoted for deepwater Gulf of Mexico platforms. We believe that oil companies would not be willing to subside McDermott's competitors by awarding platforms at higher prices. We also believe that any company in a monopolistic position will be cognizant enough to keep profits and prices high enough to capitalize on its monopoly, but, not so excessive as to warrant oil company subsidies to foster competition.

We do not believe the argument that has been suggested that a monopoly will not be created by the U.S. owned clause because of the KLB-1 U.S. owned barge that is also available on the West Coast. Avondale believes that it is unreasonable to assume that the owner of the only other U.S. owned barge would consider that it is its patriotic duty to expend capital money to outfit this barge with the necessary launch apparatus and to relocate this barge to the Gulf of Mexico to break the monopolistic advantage enjoyed by McDermott.

The owner of the KLB-1 barge is not in the business of transportation and installation of platform jackets. We believe the owner of this barge will make business decisions as to the use of this barge consistent with its business plan which may not ever cause this barge to see service in the Gulf of Mexico.

Therefore, Avondale believes it unreasonable for the Senate to entertain the U.S. owned provision on the assumption that KLB-1 does prevent a legal definition of monopoly in the Gulf of Mexico. What happens if KLB-1 is never used in the Gulf of Mexico because of the owner's business decisions? We suggest that the Senate carefully consider Avondale's position on the U.S. owned provision and reject this concept to provide free and open competition in the transportation and installation of deep water platform jackets in accordance with the American free enterprise system.

Launch barges generally are not crewed vessels. We have no comments on crewed vessels. Avondale supports S.1988 for launch barges.

Question 3. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if there is no prospect of Jones Act vessels entering that trade so as to meet the demand for transport in that segment of the coastwise trade?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors an exemption for launch barges as described in S.1988.

Question 4. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if Jones Act vessels are not exploiting a market for cabotage?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors an exemption for launch barges as described in S.1988.

Question 5. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if substantial economic loss results from the unavailability of vessels to transport the product in the coastwise trade?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors an exemption for launch barges as described in S.1988.

Question 6. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if alternative modes of transportation are not available to meet the logistical and economic needs of that market for timely delivery of a competitively priced product?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors and exemption for launch barges as described in S.1988.

Question 7. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if the work and products in that segment of the economy are lost to foreign competitors as a result of the above factors?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors an exemption for launch barges as described in S.1988.

Question 8. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if exempting a limited number of vessels to meet that market demand would likely result in more, rather than less, jobs in maritime-related and other segments of the economy?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors an exemption for launch barges as described in S.1988.

Question 9. Do you believe that an exemption should be granted for a limited number of foreign-built but U.S.-owned and -crewed vessels if the exempted vessels are precluded from competing with any future fully qualified Jones Act vessels that seek to engage in that trade?

Answer. Subject to our strong exception to the U.S. owned provision and comment on crewed vessels stated hereinabove as an answer to Question 2, Avondale favors an exemption for launch barges as described in S.1988.

Senator BREAUX. Thank you, Mr. Dupont. It is good to hear from you.

Next Mr. Leon Heron.

STATEMENT OF LEON C. HERON, JR., FORMER EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, GULF MARINE FABRICATORS, INC.

Mr. HERON. Thank you, Mr. Chairman. Thank you for the opportunity to appear before the Merchant Marine Subcommittee today.

My name is Leon Heron and I am here in my capacity as former executive vice president and general manager of Gulf Marine Fabricators, a Peter Kiewit Sons company. Gulf Marine was established in 1984 and operates two fabrication yards in the Texas Gulf Coast.

We are currently fabricating the largest platform jacket ever built for Shell Offshore, Inc. The platform itself will stand 1500 feet, which is a good 14 to 15 stories higher than the Sears Tower in Chicago.

The jacket itself is massive, weighing 50,000 tons at loadout—the largest single piece structure to be installed anywhere in the world.

Gulf Marine has employed up to 1,100 people since opening its doors a few years ago. We have demonstrated approximately $40 million in payroll, and $65 million in the purchase of services and tools, creating a substantial impact on the economy of South Texas.

Right now, despite the state of the economy in Texas, Gulf Marine is making ends meet. However, the continued economic viability of Gulf Marine and the domestic fabrication industry are threatened by the current U.S. Customs interpretation regarding the use of foreign-built launch barges.

As you know, prior to November 1984 the U.S. Customs Service had interpreted that dual mode transportation of platform jackets did not constitute movement between two U.S. points. However, in November of 1984 Customs reversed this position.

The 1984 Customs ruling creates a substantial problem for U.S. fabricators. If at a proposed platform location a coastwise point has been established, the use of a coastwise certified vessel is required. This situation is going to occur with increasing frequency as the offshore industry moves into deeper water.

The problem facing U.S. fabricators is that there are no U.S.-built barges with the carrying capacity large enough to transport these large platform jackets to their installation sites and launch them.

The existing state of the law is such that it renders every U.S. fabricator ineligible to bid on any deepwater project which involves an established coastwise point. In essence, Mr. Chairman, we are taken right out of the ballgame.

If the law is not changed, the result will be that all future deepwater structures for which a coastwise point is established will be built in foreign fabrication yards and transported to the Gulf of Mexico on foreign built barges. This result would be devastating to the U.S. fabrication industry.

Mr. Chairman, in my opinion it is unlikely that any large domestic launch barges will be built in the near future. The cost to construct a barge of this class in the United States is estimated between $40 and $50 million. This is almost twice as expensive as the cost of building a foreign-built barge.

One must question whether this makes economic sense. A U.S. marine contractor would be unable to spread these enormous costs out over enough projects to recover expenses, let along turn a profit.

If a U.S. barge were built, substantial costs would be passed on to the domestic fabricators, a factor which would severely impair their competitive position in the worldwide fabrication industry.

We already are at a cost disadvantage compared to the foreign competitors. One area in which the U.S. fabricators can remain competitive is lower transportation costs.

Mr. Chairman, there may be some who would refute my conclusions on whether a U.S. launch barge can or will be built, and it is not our intent to try and limit the business of U.S. shipbuilders.

All I know is that a launch barge capable of carrying my deepwater structures is not being built now and it is unlikely that such a barge will be built in the near future, clearly not in time to make Gulf Marine eligible to bid on the next series of major projects.

If Congress fails to enact, the economies of both Texas and Louisiana will suffer. We estimate that with the loss of one large project alone, one million man-hours or more will be lost, which equals approximately $20 to $25 million worth of fabrication business and over 500 jobs.

There has been some discussion that U.S. fabricators should await relief from the Customs Service. We do not believe that Customs will be inclined to reverse itself. Congressional action is needed to resolve this issue once and for all.

I would like to address one final issue of concern. It has been suggested for the purposes of remaining closer to the intent of the Jones Act the launch barge provision of S. 1988 be limited to permit only U.S.-owned barges to operate under its auspices.

Access to both U.S. and foreign-owned launch barges as S. 1988 provides is absolutely essential to the survival of Gulf Marine and other U.S. fabricators. Let me explain why. If just U.S.-owned launch barges are permitted to operate, a complete monopoly would be granted to one U.S. company that operates launch barges in the Gulf of Mexico. All Gulf Coast U.S. fabricators would have to rely on that one company, a competitor, for use of its launch barges.

Mr. Chairman and members of the subcommittee, I think that once a thorough understanding of our problem is reached, the need for this legislation is apparent. Major projects are expected to go out shortly and without some assurance U.S. fabricators will be able to use foreign-built launch barges, we will not be eligible to compete for this work. The result is that the business will fall to foreign fabricators.

I therefore urge the committee to work toward prompt enactment of S. 1988.

Thank you for the opportunity to appear here today.

[The statement and questions and answers follow:]

STATEMENT OF LEON C. HERON, JR., FORMER EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, GULF MARINE FABRICATORS, INC.

Mr. Chairman, thank you for the opportunity to appear before the Merchant Marine Subcommittee today. My name is Leon Heron and I am here in my capacity as the former executive vice president and general manager of Gulf Marine Fabricators, a Peter Kiewit Company. I have recently moved to Boston as General Manager of Kiewit's facilities there. However, I continue to retain responsibility over the launch barge issue.

Gulf Marine, established in 1984, operates two fabrication yards on the Texas Gulf Coast, one in Arkansas Pass and the other in Ingleside. We build platform jackets, platform decks and other structures for the offshore drilling and production industry.

Gulf Marine is currently fabricating the largest platform jacket ever built for the Shell Oil Company and recently completed fabrication of another large jacket, Mobil's Green Canyon.

Shell's Bullwinkle jacket will be located some 150 miles out in the Gulf of Mexico in 1350 feet of water. The entire structure will stand about 1,615 feet, which is a good 14-15 stories higher than the Sears Tower in Chicago. The jacket section alone will stand at 1,365 feet. The structure is massive, weighing 50,000 tons at loadout—the largest single-piece structure to be installed anywhere in the world. Installation is to be completed by October 1988.

Gulf Marine currently employs approximately 300 people. At the peak of our work on Bullwinkle one year ago, we had 1,100 employees. Since operating its doors a few years ago, Gulf Marine has generated approximately $40 million in payroll and $65 million in the purchase of services and tools—creating a substantial impact on the economy of southeast Texas.

Right now, despite the Texas economy, Gulf Marine is making ends meet. However, the continued economic viability of Gulf Marine and the domestic fabrication industry is threatened by the current U.S. Customs interpretation regarding the use of foreign-built launch barges. Without a change in the law, our ability to compete with foreign fabricators in the future will be substantially limited. I am here today to ask Congress to help us remain competitive by enacting S. 1988.

THE PROBLEM

A. Customs Reversal on Dual-Mode Transportation

The Merchant Marine Act requires the use of coastwise certified vessels when merchandise is transported between a point in the United States and a point on the Outer Continental Shelf (OCS). Only U.S.-owned, U.S.-built and U.S.-operated vessels can be coastwise certified. Prior to November 1984, this law did not present a problem for U.S. fabricators. Platform jackets were transported from the U.S. to the open seas, launched from a barge, and then towed to a coastwise point. The U.S. Customs Service had interpreted that such "dual-mode" transportation did not constitute movement between two U.S. points and, therefore, use of coastwise certified vessels was not necessary. However, in November 1984, Customs reversed this position and determined that "dual-mode" transportation of platform jackets would be subject to the requirements of the Merchant Marine Act.

B. Impact on U.S. Fabricators

The 1984 Customs ruling creates a substantial problem for U.S. fabricators. If at a proposed platform location there is a well-head, a foundation template or some other form of attachment to the sea floor, a coastwise point has been established and the use of a coastwise certified vessel is required. This situation is going to occur with increasing frequency because, as the offshore industry moves into deeper water, the need to have items on the sea floor at the platform site becomes more important. For example, the next major platform to be put out for bid, Shell's Popeye project, will have to be installed in two parts due to its enormous size. Assuming this contract is awarded to a U.S. fabricator, after the first half of the platform is attached to the sea bed, a coastwise point will be established and only a U.S.-owned, U.S.-built and U.S.-flagged vessel can be used to carry the second half of the jacket out to the Gulf.

The problem facing U.S. fabricators is that there are no U.S.-built barges with a carrying capacity large enough to transport these large platform jackets to their installation sites and launch them. The existing state of the law is such that it renders every U.S. fabricator ineligible to bid on the Popeye project or any subsequent deepwater project which involves an established coastwise point. In essence, Mr.

Chairman, we're taken right out of the ballgame. Such a situation can only mean a substantial loss of business for U.S. fabricators to foreign competitors who are not subject to Jones Act requirements.

THE NEED FOR LEGISLATION

A. No. U.S.-Built Barges Exist for Deepwater Construction

As stated above, the Customs ruling creates a situation in which there are no barges qualified to carry deepwater platform jackets from the U.S. to a coastwise point. For our purposes, we define deepwater as water depths of approximately 500–600 feet or more. Only five launch barges exist which are large enough to carry jackets similar to the Bullwinkle jacket, that is, in excess of 29,000 tons of load. All of these are foreign-built. There are seven additional launch barges in the 14,000 to 29,000 ton range. Again, all of these are foreign built. This leaves the U.S. offshore fabrication and oil industries in a situation in which *it is impossible to comply with U.S. law.*

If the law is not changed, the result will be that all future deepwater structures for which a coastwise point is established will be built in *foreign* fabrication yards and transported to the Gulf of Mexico on foreign-built launch barges. This result would be devastating to the U.S. fabrication industry.

B. Costs of Building U.S. Barge Are Prohibitive

Mr. Chairman, in my opinion, it is unlikely that any large domestic launch barges will be built in the near future. The cost to construct a barge of this class in the United States is estimated between $40–$50 million. This is almost *twice* as expensive as the cost of building a foreign-built barge. One therefore must question whether it would make economic sense for a U.S. marine contractor to make such an investment. It's unlikely there would be enough work that he would be able to spread these enormous costs out over enough jobs to recover expenses, let alone turn a profit. As you know, a launch barge does not have many practical alternative uses due to its highly specialized nature, so the barge owner cannot make up the cost elsewhere.

This leads to the conclusion that, if a U.S. barge were built, its substantial cost would be passed on to domestic fabricators—a factor which would severely impair their competitive position in the worldwide fabrication industry. We already are at a cost disadvantage to foreign competitors in a number of areas, such as the cost of labor and certain materials. One area in which U.S. fabricators can remain competitive is lower transportation costs.

Mr. Chairman, there may be some who would refute my conclusions on whether a U.S. launch barge can or will be built, and it is not our intent to try and limit the business of U.S. shipbuilders. All I know, Mr. Chairman, is that a launch barge capable of carrying my deepwater structures is not being built now, and it is unlikely that such a barge will be built in the near future—clearly, not in time to make Gulf Marine eligible to bid on the next series of major projects.

C. Harm to the Texas and Louisiana Economies

If Congress fails to enact legislation to permit the use of the larger foreign-built launch barges, U.S. fabricators will be unable to continue to compete for fabrication of deepwater platforms for the OCS. This will affect the economies of both Texas and Louisiana, which are still sorely suffering from the economic downturn in the oil and gas industry. We estimate that with the loss of one large fabrication job alone, one million manhours or more of work will be lost, which equals approximately $20 to $25 million of fabrication business and over 500 jobs.

The current situation also harms the U.S. shipping service industry. With fewer platforms and drill wells being built by U.S. companies, fewer U.S. flag tugs, supply boats and crewboats will be needed to service them.

LAUNCH BARGE AMENDMENT DIFFERS SIGNIFICANTLY FROM CUSTOMS PETITION: IT IS NARROW AND LIMITED IN NATURE

There has been some discussion that U.S. fabricators should await relief from the Customs Service. Currently, there is a petition pending there to overturn the 1984 Customs Decision and reinstate the dual-mode interpretation of the coastwise laws. While ideally Gulf Marine would welcome such relief, we do not believe that Customs will be inclined to reverse itself. Congressional action is needed to resolve this issue once and for all.

82-999 0 - 88 - 4

A number of those opposing the Customs petition agreed with this viewpoint. Of the six companies or trade associations submitting comments in opposition to the petition, five state in their comments that the appropriate means of addressing this issue is through congressional action. Thus, we have turned to Congress. But it is important to note that, in seeking relief, we have narrowed our request significantly from that sought at Customs. I would like to elaborate a bit on the narrow and limited relief that S. 1988 provides.

Specifically, under S. 1988, a U.S. fabricator could transport a platform jacket on a foreign-built launch barge from a U.S. fabrication yard to a coastwise point on the OCS only if:

(1) the launch barge has a carrying and launch capacity of 12,000 long tons or more;

(2) the launch barge was built or under construction as of the date of enactment of the amendment;

(3) the launch barge is documented under the laws of the United States; *and*

(4) there is no U.S. coastwise certified launch barge of lesser capacity capable of carrying the platform jacket.

All of these requirements must be met.

Mr. Chairman, the ultimate effect of this amendment is to permit U.S. fabricators to compete for deepwater fabrication work. It is not designed to affect the U.S. shipbuilding industry in any manner. Relief is necessary and clearly warranted under the limited circumstances defined here.

U.S. OWNERSHIP ISSUE

I would like to address one final issue of concern. It has been suggested that, for the purposes of remaining closer to the intent of the Jones Act, the launch barge provision of S. 1988 be limited to permit only *U.S.-owned* barges to operate under its auspices. As currently drafted, S. 1988 would grant U.S. fabricators access to both *U.S.-owned and foreign-owned* launch barges, as long as they are U.S. flagged. Access to both U.S. and foreign-owned launch barges, as S. 1988 provides, is absolutely essential to the survivial of Gulf Marine and other U.S. fabricators. Let me explain why.

If S. 1988 were to become law, approximately twelve launch barges would be available to transport platform jackets for deep water work (carrying and launch capacity over 12,000 long tons). If just U.S.-owned launch barges were permitted to operate under this provision, this would reduce the number of eligible launch barges to five, four of which are owned by one company, which also happens to be a fabricator. The fifth barge is owned by a West Coast company and does not operate in the Gulf of Mexico. Thus, a significant monopoly would be granted to the one U.S. company that operates launch barges in the Gulf of Mexico. All Gulf Coast U.S. fabricators would have to rely upon that one company, a competitor, for use of its launch barges. This is a situation in which I would hate to see us place. In sum, the practical effect of requiring U.S. ownership under this provision is that (1) Congress would bestow a monopoly upon one company; and (2) it would deprive the other U.S. Gulf Coast fabricators of the opportunity to compete equally for new work.

CONCLUSION

Mr. Chairman and Member of the Subcommittee, I think that once a thorough understanding of our problem is reached, the need for this legislation is apparent. Marjor projects are expected to go out for bid shortly and, without some assurance U.S. fabricators will be able to use foreign-built launch barges, we will hot be eligible to compete for this work. The result is that this business will fall to a foreign fabricator. We would like the opportunity to keep this business within our border. I therefore, urge the committee to work toward prompt enactment of S. 1988.

Thank you for the opportunity to appear here today. Please feel free to ask any questions you may have.

QUESTION OF THE CHAIRMAN AND THE ANSWERS

Question. It has been said that equity compels some relief from the 1984 Customs Service ruling.

As to the dual-mode movement of platform jackets, could you give examples of how U.S. fabricators changed their position in reliance on the Customs earlier favorable ruling in 1983, that dual-mode movements were not subject to the Jones Act. For example, in reliance on that Customs ruling, how many foreign-built launch

barges were acquired or otherwise arranged for; and how many platform jackets were actually transported, or arranged to be transported?

Answer. When Gulf Marine was formed in 1984, it was our intention to build a business founded upon fabricating the larger platform jackets that would be needed for deepwater offshore production facilities. Quite frankly, for a number of reasons, Gulf Marine did not believe it could be competitive in the market for smaller jackets and components. Thus, in establishing the business we based our market assumptions on the fact Gulf Marine could compete for and bid on *all* deepwater projects, whether two coastwise points were involved or not. This was turned around on us when the Customs Service published its ruling reversing its position on dual-mode transportation on January 30, 1985. At that time, our doors were open and we had commenced work on our first major project.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. If the need for the launch barge exemption is to enable U.S. platform fabricators to compete for business on the Outer Continental Shelf, couldn't S. 1988 be more narrowly drafted to exempt foreign-built lauch barges *only* when they are transporting platform jackets on the Outer Coninental Shelf?

Answer. It is our understanding that the launch barge provision in S. 1988 is intended to apply only when foreign-built launch barges with a launch capacity over 12,000 long tons are transporting platform jackets to points offshore.

The launch barge provision is S. 1988 is intended simply to exempt the *transportation of platform jackets* on launch barges with a luanch capacity greater than 12,000 long tons from the Jones Act *if* the barge is U.S. flagged. This provision does *not* provie automatic coastwise certification for this category of launch barges. These barges would not be eligible for conversion for other uses and would be restricted to transporting platform jackets.

This is a narrowly drafted exception and only applies to a certain class of launch barges in which no U.S. built launch barges exist that are capable of launcing platform jackets needed for deepwater work.

Question. Representatives of Shell Oil Company have told the Committee staff that it has *not* yet made a decision whether to develop its oil drilling project "Popeye" on the Outer Continental Shelf. And even if it decides to develop it, it does not know if it will use a U.S. platform fabricator, even if S. 1988 is enacted.

Could you tell the Committee what the current *actual* need is, as opposed to a speculative or possible need, for any launch barges of 12,000 long tons or over for projects on the Outer Continental Shelf.

Answer. With regard to actual projects in the Gulf of Mexico that will require the use of large launch barges, we know of at least five. Two were awarded last fall. Two are going out forbid by Conoco shortly, and there's the Shell Popeye project which, according to our information, is moving forward. All of these are deepwater projects and will require the use of foreign-built launch barges with a launch capacity over 12,000 long tons. It is clear from this recent activity that the amount of deepwater work in the Gulf is increasing and, with this increase there is a need for larger launch barges to be able to operate between coastwise points.

Also, as the price of oil continues to rise, activity in the Gulf of Mexico will increase. This is supported by past history and experience which have shown that as the price of oil increases, offshore U.S. domestic production increases production increases. Right now, we understand that a number of companies have plans for offshore facilities on the drawing board and are waiting for the right economic climate to begain construction.

It is imperative to U.S. fabricators that S. 1988 be enacted. Unless a U.S. fabricator has the legal authority to deliver its goods, it will be unable even to bid on deepwater projects. This will result in platform jackets being built in foreign fabrication yards, rather than in the U.S. These jackets will then be transported to the U.S. OCS on the same foreign-built launch barges we are seeking permission to use.

Senator, what we are seeking is *the opportunity to compete* for fabrication business on the U.S. OCS. We feel confident that U.S. fabricators can be competitive and win this work if given the chance. If we don't get it, several U.S. companies and thousands of U.S. workers will be denied work that could have been ours. It seems that our limited request is reasonable given the urgent need for relief and the benefits to the U.S. economy and its workers if S. 1988 is passed.

QUESTION FROM SENATORS DANFORTH, PACKWOOD AND STEVENS

Question. You note that the costs of building a large launch barge in the United States would be prohibitively high. Would Gulf Marine purchase a foreign-built barge if it could be used in the coastwise trade?

Answer. No, Gulf Marine is in the business of fabricating offshore drilling platforms. We do not have the resources to enter into a new line of business.

Generally, in order to make a profit operating a launch barge, it must be used worldwide. Since we do not have either the facilities or economic capability to pursue such an endeavor, Gulf Marine would need to recover 100% of the costs for the purchase of a launch barge on one project. In today's market, we could not do this and still structure a competitive bid. One of the main reasons a U.S. fabricator is competitive in this business is the lower transportation cost—to add on the cost of a barge would take us out of the competition.

We also have to deal with the question of storage and maintenance costs. We do not have the facilities to store one of these huge barges or the resources to pay for this service. It is my understanding that it would cost over one million dollars a year just to store and maintain the barge.

In sum, undertaking the kind of expense necessary to purchase and maintain a large launch barge is basically out of the question for the smaller, domestic fabricators like Gulf Marine.

Senator BREAUX. Thank you very much, Mr. Heron.

Next I would like to welcome the Mayor of the City of Morgan City, which probably has some of the highest unemployment in the nation, and has been struggling. The mayor has been doing a fine, fine job of keeping that city afloat, literally.

Mayor La Fleur.

STATEMENT OF CEDRIC LA FLEUR, MAYOR, MORGAN CITY, LA, ACCOMPANIED BY MIKE TAYLOR, ST. MARY PARISH COUNCILMAN

Mr. LA FLEUR. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee.

I am Cedric La Fleur, Mayor of Morgan City, Louisiana. And I am accompanied by Mr. Mike Taylor, who is a St. Mary Parish Councilman.

We are here to compliment Merchant Marine Subcommittee Chairman Breaux for introducing S. 1988 and to urge that the bill be enacted into law as soon as possible.

In a word, 1988 is the year for S. 1988. We need the legislation and we need it now. We need it for a number of good reasons. The oil price slump has been killing us in both our shipbuilding and platform fabrication industries. Yard after yard has been shut down and many hundreds of workers have been laid off. Last year unemployment in Assumption Parish was 32 percent; Terebonne Parish, 25 percent; and St. Mary Parish, 28 percent. The numbers speak for themselves. Hard-working, able, red-blooded Americans are living on food stamps when they want to go to work. Our city revenues have shrunk 40 percent since 1981. We have had to lay off 25 percent of our municipal employees who had worked for years to provide municipal services to the workers in the fab yards and shipyards, who themselves have been laid off.

S. 1988 can help turn things around. It can help protect us from foreign competition wanting to build sludge barges and wanting to build platforms for our outer continental shelf in the Gulf of Mexico waters.

The construction of each new sludge barge would provide employment for 70 people for a year. I am told that the New York

City sludge barge contract which went foreign created jobs for 180 people for one year, which I am sad to say are foreign jobs. S. 1988 would require that future sludge barges be built in the USA. We need the work here in the U.S. because we on the Gulf Coast and, for that matter, any other U.S. coast, cannot compete with cheap foreign labor markets. In essence, they are killing us.

We also need S. 1988 to help us compete for fabrication work. Let me talk about that for a minute. Because of a cockeyed U.S. Customs ruling in 1984, none of our American fabricators anywhere else along the Gulf Coast can even bid for deepwater work anywhere in the Gulf, because the Customs ruling outlawed using foreign bottoms that Customs previously had said were okay to use to carry and launch deepwater platforms. The only launch barges in existence anywhere in the world big enough to carry the big deepwater platforms, estimated to exceed 12,000 long tons, were built foreign. I would love to have our shipyards build launch barges as well as platforms, but it is not in the cards. I will tell you what I mean.

Foreign fabrication yards in Korea, Japan, and Singapore have walked off with the West Coast offshore platform market during the past decade, and now they have their sites set on the Gulf of Mexico. And the U.S. Customs Service seems to be all for them.

I will tell you why I said that. The oil companies holding leases in the Gulf require U.S. fabrication yards to guarantee that they can transport and launch platform jackets from Gulf yards out onto the offshore lease site before they let them bid. Now, Customs has told the fabricators that the only barges they could use are all illegal. Therefore, the leaseholders are being forced to go to Mexico, Venezuela, and Brazil to get their platforms.

So you say, why not make them build their barges in the U.S.? Here is why that will not work. A deepwater launch barge costs around $40 to $50 million to build in the U.S. Foreign-built barges already in existence are sitting at their moorings in the Gulf ready for work. To build a domestic launch barge under these circumstances would drive the price of the platform out of sight.

So the OCS leaseholders would say, if you do not pass S. 1988 and therefore let the 1984 Customs ruling stand and otherwise make me build launch barges in the U.S., and therefore my overall cost—I will guarantee you I will go foreign and bring the foreign-built platform jackets back on a foreign-built launch barge, flying a foreign flag, and there is nothing you can do to stop me. And they are right.

All S. 1988 does for foreign-built lauch barges is to let U.S. fabricators compete with foreigners to build deepwater platforms for use on the American OCS.

It also makes foreign launch barges used in the Gulf to be documented USA, fly the U.S. flag, and be subject to U.S. jurisdiction and U.S. laws.

So if S. 1988 is not passed and signed into law, all the deepwater platform jacket fabrication work automatically goes to foreign yards. And then, instead of 25 and 30 percent unemployment, we lose many hundreds of jobs more.

S. 1988 does not blow a gigantic hole in the Jones Act. All it does is strengthen the Jones Act for building sludge barges in the U.S.

and lets its U.S. fabricators compete to build platforms to be used in U.S. waters.

S. 1988 also says that if foreign barges are to be used, they cannot put the existing fleet of American barges out of business. S. 1988 says, if there is an American-built launch barge around, it gets the business over the foreign-built barges. But as I said, there are no U.S.-built launch barges big enough to launch the deepwater platform jackets weighing 12,000 long tons or more.

As a matter of fact, there are no U.S.-built launch barges capable of launching platforms any heavier than 6300 tons. That is why we need to grandfather twelve foreign-built launch barges.

S. 1988 also says after the grandfathered foreign-built launch barge fleet wears out—and that is going to happen well inside 20 years from now—all future launch barges have to be built in the U.S. and fly the U.S. flag before they can haul platforms from the Gulf yards out to the OCS.

For all these reasons, Mr. Chairman, we need S. 1988. We need it to help save American jobs that otherwise are sure to go foreign. Please help us get this bill passed as soon as you can.

Thank you.

Senator BREAUX. Thank you Mayor for a very excellent statement. Mr. Stocker, we are glad to have you here. Please proceed with your testimony.

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA

Mr. STOCKER. Thank you, Mr. Chairman. I normally go by the name of John Stocker, President of the Shipbuilders Council, but today I feel like the Lone Ranger. Obviously the Shipbuilders Council supports elements of S. 1988, particularly those that apply to the provisions in regard to sludge barge construction, and we thank you for your efforts in that regard.

We wish that Mayor Ed Koch of New York City had awarded a contract to the American shipyards, because in the intervening period since that contract was awarded a major yard in Brooklyn went out of business. Therefore, we are very grateful for the work that you have done in that regard.

One area of the legislation that we are concerned about regards the launch barge provision. We have stated in our testimony to you, in the statement that we provided to the committee, we are opposed to the launch barge provision because we consider it to be a violation of the Jones Act.

We say this not unmindful of the economic condition that the Gulf coast fabricators find themselves in. But we have consistently and historically opposed violations of the Jones Act. I might point out to you that we just recently won a court case involving a Customs Service ruling in the Gulf coast area where the Jones Act was upheld, and we also of course counted on your support in preserving the Jones Act where the provisions were being offered up by the special trade representative in the U.S.-Canada free trade talks.

With these examples of recent activities regarding the preservation of the Jones Act, I think it should be very clear that the Coun-

cil strongly supports preserving the coastwise trades to U.S. built, U.S. owned and U.S. documented vessels.

Our concern is that it only takes one exception to the Jones Act to set an extremely dangerous precedent, that could in fact lead to the total loss of our last remaining commercial market.

And I might add, Mr. Chairman, that it is unfortunate that in the absence of any clear maritime policy enunciated by the Administration, once again we are reduced to addressing ourselves to ad hoc schemes.

The Council will continue to work for the expansion of the Jones Act, but not at the cost of weakening or undermining our current laws.

I might also add that there would be no need for a grandfather exemption of these launch barges if Congress had acted upon the long time recommendation of this industry to adopt a buy American provision for mobile oil rigs, production platforms and related vessels used in the exploration and production of oil and gas in the U.S. outer continental shelf.

We believe that, largely because of the fact that the outer continental shelf is land owned by the U.S. federal government, and therefore by the U.S. taxpayers, and there ought to be consideration for keeping those jobs in the development of the OCS in the United States.

And we question why those producers, or those people exploring and producing those oil fields, have consistently rejected the idea of a buy America provision.

Currently, U.S. fabricators of offshore oil equipment are experiencing a dramatic market decline as the construction of the equipment is being exported to Korea and Japan. Because of the willingness of these countries to provide subsidies to their producers of offshore oil equipment and due to lower labor rates, U.S. fabricators are placed in an unfair competitive disadvantage.

The Congress and in particular the Senate, has failed year after year to see the need for a buy American provision for the OCS equipment, because this requirement has not been embraced by Congress. There are no U.S. built launch barges with adequate carrying capacity available to transport platform jackets from U.S. ports to a point in the OCS.

With such a provision, the new construction market would indeed be created. I would like to note that for every mobile oil drill rig or platform built, 450 shipyard jobs and 1,200 indirect jobs in steel and related supply industries would be produced in the United States.

Given the state of the commercial shipbuilding market, the U.S. trade imbalance and high national deficits, it would be more appropriate to be legislating a buy American provision for the OCS rather than seeking an exemption to our current maritime laws for foreign built launch barges. The lack of such a policy has played a major role in placing two of our member shipyards in the dilemma they are in today.

This concludes my prepared statement. I will be pleased to answer any question.

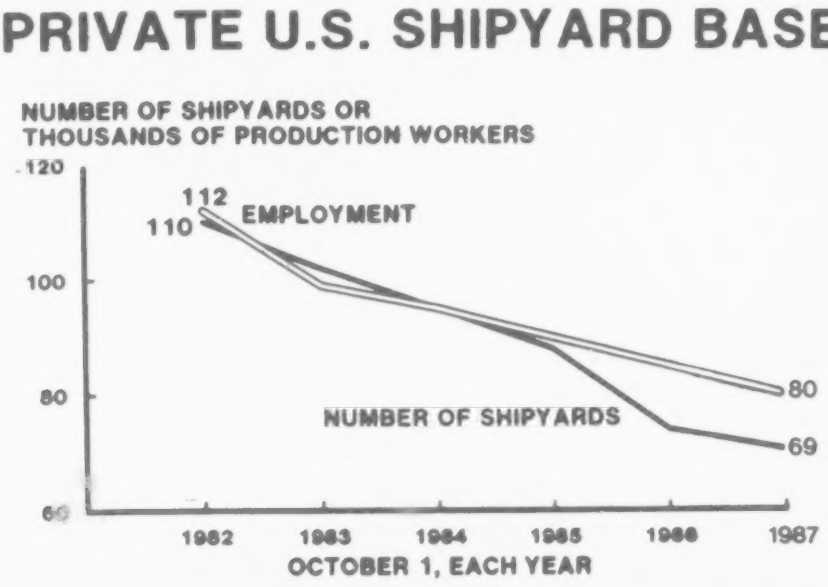
[The statement and questions and answers follow:]

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA

Mr. Chairman, members of the Subcommittee, I am John J. Stocker, President of the Shipbuilders Council of America. On behalf of the Council—the national trade association representing the principal domestic shipbuilders, ship repairers, and the vendors of materials and services to those industries—I appreciate having this opportunity to express our views on S. 1988, legislation that requires vessels used to transport valueless merchandise to be built in the United States and a provision that grants foreign-built launch barges a grandfather exemption to the Jones Act. The Council represents approximately 95 percent of the work force engaged in shipbuilding and ship repair in the United States.

Before focusing on this legislation, I would like to present to you a short overview of the status of the shipbuilding industrial base in the United States in an effort to explicitly demonstrate the crisis that this industry faces and the impact this legislation could have on the industry.

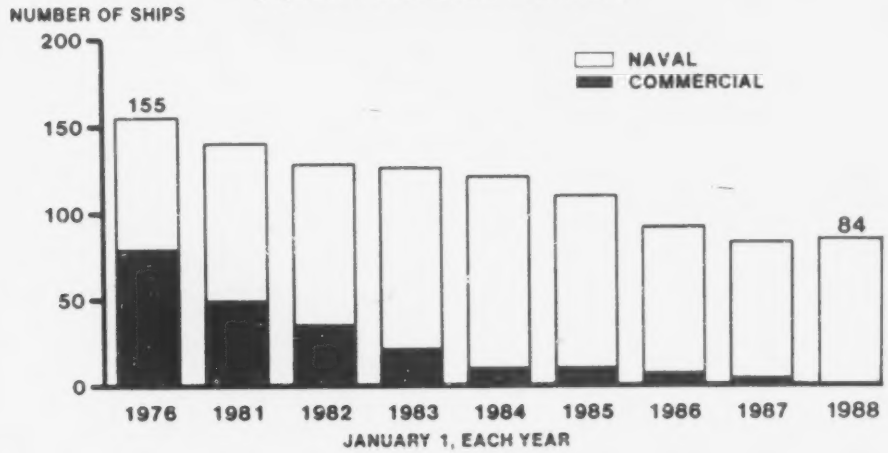
Based on the impetus that the Reagan Administration has given to naval shipbuilding and the drive to a 600 ship Navy, it would be reasonable to assume that this industry is fully employed and working to capacity. Unfortunately, this assumption is not in accord with reality. In fact, as you see from the following chart, the industry has suffered a precipitous decline since October 1982:



These figures represent both the shipbuilding and ship repair segments of the industry and reflect a 37 percent decrease in the number of shipyards and a 29 percent reduction in production workers in just five short years. Absent a dramatic turnaround, the Council fully expects this decline to continue. The Council is aware of at least eleven shipyards nationally operating under the protection of Chapter 11.

The proximate cause for this decline has been the total collapse of the commercial shipbuilding market in this country and the near complete dependence on the Navy as the industry's only customer. Over 90 percent of all new construction and ship repair is performed for the Navy. The collapse in commercial shipbuilding is directly attributable to the uneven playing field that U.S. industry must compete on in the international market with foreign shipyards. U.S. yards are forced to compete without aid or subsidy against foreign yards that receive heavy infusion of support, either directly or indirectly. The next chart graphically presents the stark reality of the steady attrition of this market:

NUMBER OF NEW COMMERCIAL AND NAVAL SHIPS UNDER CONSTRUCTION OR ON ORDER IN U.S. PRIVATE SHIPYARDS (1,000 TONS AND LARGER)



On November 9, 1987, the last oceangoing-merchant ship under construction in a U.S. shipyard was delivered to Sea-Land Service, Inc. by Bay Shipbuilding Corp., Sturgeon Bay, WI. No new orders for commercial vessels have been placed or are expected in the near term. The only viable business opportunity the Council is aware of is the proposal of Matson Navigation Company to construct two new containerships and a container barge for its West Coast/Hawaii service.

S. 1988 can be characterized as a bill that on the one hand expands the Jones Act while retracting it on the other. The expansion part of the bill would extend the scope of the Jones Act to include the transportation of valueless material and any dredged material, regardless of whether it has commercial value, from a point in the United States to a point on the high seas within the Exclusive Economic Zone (EEZ). The need for this legislation grows out of a ruling by the United States Customs Service that the use of foreign-built barges to transport sewage sludge from New York City to a dump site 106 miles out from the U.S. coast would not be a violation of the Jones Act. The legal basis for the April 30, 1986, ruling is that sludge, which has no apparent value and will not be used commercially, is not considered "merchandise" for the purposes of the statute. Addmitionally, the transportation in question would not be between two coastwise points.

The Jones Act is one of, if not the [illegible] viable commercial shipbuilding market available to U.S. shipbuilders. Barges utilized to transport municipal sewage sludge and other valueless material to ocean disposal sites within the EEZ represent a business opportunity for domestic shipyards which have received a dearth of commercial ship orders in recent years. Accordingly, the Council fully supports this provision of the bill.

Having stated the industry's support for the valueless merchandise provision, I must express the Council's opposition to the provision that would amend the Jones Act to allow existing foreign-built launch barges or launch barges currently under construction in foreign shipyards to operate in the coastwise trade.

The Council has consistently opposed any administrative waiver under the Act of December 27, 1950 (64 Stat. 1120) and any statutory waiver or weakening of the Jones Act. In an attempt to clearly illustrate the Council's long-standing opposition to any retraction of the Jones Act, I would like to take a moment to share just a few of our recent efforts on issues that could adversely impact the industry.

On September 13, 1985, the United States Customs Service ruled that a foreign-built barge which loaded a submersible drilling rig at a coastwise point that was then transported to a ship repair facility in Brownsville, Texas, was not a violation of section 27 of the Merchant Marine Act of 1920. Customs argued that because the rig was repaired on the barge and never unloaded at the repair facility, the drilling rig was loaded and discharged at just one coastwise point, and therefore did not con-

stitute a violation of the Jones Act. The Council disagreed and joined forces with the Transportation Institute to challenge the U.S. Customs Service on its interpretation of the statute in a U.S. District Court for the District of Columbia. On January 13, 1988, the judge overturned the Customs Service ruling stating that the foreign-flag carriage of an oil drilling rig as described above did indeed violate 46 U.S.C. 883 and ordered that the ruling be nullified.

The Council, in conjunction with every other segment of the maritime industry, vigorously opposed the inclusion of any maritime laws or policies in the Free Trade Agreement between the United States and Canada. If Canada were allowed access to our coastwise trade, it would set a precedent for other U.S. trading partners to insist upon the same access and could lead to the eventual demise of the U.S. merchant marine. I want to personally thank you, Mr. Chairman, and the members of this Subcommittee, who fought so hard to preserve the Jones Act for the U.S. maritime industry. As you are aware, the U.S. Trade Representative, because of your efforts, removed the maritime policies contained in the Transportation Annex from the final agreement which was signed by the two governments on January 2, 1988.

With just these examples of recent activities regarding the preservation of the Jones Act, I think it should be very clear how strongly the Council feels about preserving the coastwise trade to U.S.-built, U.S.-owned, and U.S.-documented vessels. It only takes one exception to the Jones Act to set an extremely dangerous precedent that could in fact lead to the total loss of our last remaining commercial market. The Council will continue to work for the expansion of the Jones Act, but not at the cost of weakening or undermining our current laws.

There would be no need for a grandfather exemption for launch barges if Congress had acted upon a long-time recommendation of the industry to adopt a "Buy American" provision for mobile drill rigs, production platforms, and related vessels used in the exploration and production of oil and gas in the U.S. Outer Continental Shelf (OCS). Based on the fact that all oil and gas exploration and leasing in the OCS is restricted to only U.S. producers, it is only logical that if the United States seeks energy independence that we must preserve and foster U.S. manufacturing capability and the technology required to construct the production platforms and related vessels used in the development of our offshore energy resources.

Currently, U.S. producers of offshore oil equipment are experiencing a dramatic market decline as the construction of the equipment is being exported to Korea and Japan. Because of the willingness of these countries to provide subsidies to their producers of offshore oil equipment and due to lower labor rates U.S. producers are placed at an unfair competitive disadvantage. The Congress, and in particular the Senate, has failed year after year to see the need for a "Buy American" provision for the OCS equipment. Because this requirement has not been embraced by Congress, there are no U.S.-built launch barges with adequate carrying capacity available to transport platform jackets from U.S. ports to a point in the OCS. With such a provision, a new construction market would indeed be created. I would like to note that for every mobile oil drill rig or platform built, 450 shipyard jobs and 1200 indirect jobs in steel and related supply industries would be produced in the United States.

Given the state of the commercial shipbuilding market, the U.S. trade imbalance, and high national deficits, it would be more appropriate to be legislating a "Buy American" provision for the OCS rather than seeking an exemption to our current maritime laws for foreign-built launch barges. The lack of such a policy has played a major role in placing two of our member shipyards in the dilemma they are in today.

This concludes my prepared statement. I will be happy to answer any questions you might have.

Thank you.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question 1. How many of your members oppose the launch barge provision in S. 1988; how many support it?

Answer. It is the policy of the Shipbuilders Council of America not to publicly disclose the position of each member on a particular issue. However, the Council's by-laws do *not* require a unanimous vote among the membership to support a particular position. In the case of the launch barge issue, the vast majority of our members opposed the statutory waiver of the Jones Act.

Question 2. Given the fact that no Construction-differential Subsidy (CDS) is available to U.S. yards, how can they hope to compete with foreign yards for the fabrication and delivery of platform jackets?

Answer. U.S. shipyards and fabricators have had a long history of successfully competing in the international market for platform jacket construction, particularly in the Gulf of Mexico. In addition, CDS has never been made available for the construction of energy-related projects. Thus, it is reasonable to assume that American fabricators were price competitive. However, the market dynamics have changed since the rig construction boom of the late 1970's. Foreign government intervention into that market has become profound and we do know that dumping allegations directed toward, specifically South Korea, have been largely shown to be true. Thus, it is very difficult for American fabricators to compete without the aid of subsidy in this market.

QUESTION OF SENATORS DANFORTH, PACKWOOD AND STEVENS

Question. You commented on the status of large launch barge construction activities in U.S. shipyards during the hearing and noted that the economic arguments in favor of a limited exemption from the Jones Act appeared to be extremely powerful in this case. Similar concerns have been expressed about the shortage of U.S.-built vessels to meet the needs for timely and economically competitive transport of other material as well. Please provide for the record information on any current, contracted, or planned construction in U.S. shipyards of dry bulk cargo vessels.

Answer. I think my statement on the economics of the fabrication of platform jackets has been misconstrued to suggest that the Shipbuilders Council of America supports the amendment to the Jones Act. This is not true as my testimony clearly indicated. Fabrication of platform jackets, mobile oil rigs and related vessels could provide substantial business for U.S. shipyards. This is why the Council has supported a "Buy American" provision for the equipment used in the exploration and development of our energy resources in the Outer Continental Shelf.

In answer to your question, MATSON NAVIGATION CO. plans to build two container-ships in the United States for its West Coast/Hawaii trade. Preliminary information has already been requested from U.S. shipyards.

Senator BREAUX. Thank you very much Mr. Stocker, and I thank all of the members of the panel for their excellent presentations.

Let me ask perhaps Avondale and McDermott, or Mr. Heron, on behalf of their companies, suppose we have your yards build offshore equipment platforms or rigs or equipment that would require a launch barge of 12,000 tons or greater to bring that piece of equipment to a site in the offshore area.

What would you do today with that piece of equipment that you built, if you could not use one of these 12 foreign built launch barges?

Mr. HERON. Mr. Chairman, do you mean that if we were to have a contract to build?

Senator BREAUX. Suppose you have in your yard a completed jack up rig or a platform that requires a 12,000 or greater launch barge to put it into place to be utilized. And under the Customs ruling that is now in effect, how would you get it to that location?

Mr. HERON. We would have to build a barge.

Senator BREAUX. Why would you not then build a barge to tow it to that particular location?

Mr. HERON. Because the cost to build a single barge for a 12,000 ton or more is somewhere in the $40 million to $50 million range. I do not think anybody would enter into a contract, Mr. Chairman, not knowing that they had a barge in hand that they could launch it, I mean to put the platform on and launch it.

So a prudent businessman would not let himself get into, put into a position that he could not load out.

Senator BREAUX. So what would a company that would be wanting that type of equipment platform jack up rig or what have you, what would they likely do if they know that you do not have a launch barge in order to take their piece of equipment offshore?

Mr. HERON. They would not pre-qualify us or let us bid on their project.

Senator BREAUX. Where would they get their equipment built?

Mr. HERON. They would go to a foreign fabrication yard.

Senator BREAUX. And would the foreign fabrication yard use a foreign built launch barge to deliver that equipment to the U.S. OCS and set it up and deliver it?

Mr. HERON. Absolutely. In fact, they would probably use one of the 12 barges that are considered to be part of this bill.

Senator BREAUX. Let me ask a question about the impact, because it impacts more than just Avondale or Gulf coast fabricators or any other fabrication yard, with regard to the amount of U.S. materials that go into one of these gigantic pieces of equipment, can anybody give me any indication of what is involved from the standpoint of steel or supplies or what goes into that equipment? If you can build them in the U.S., who is affected?

Mr. FRANKLIN. Well it certainly is going to have a significant impact on the domestic steel industry as well. Some of our market studies which I reviewed just prior to the testimony here at the committee indicated that there is approximately 250,000 tons of U.S. steel for several projects over the next three years. And in my figures that equates to something like $180 million worth of U.S. steel sales.

That also would go to foreign sources.

Senator BREAUX. If these pieces of equipment would be built in foreign yards, in South Korea for instance or Japan, or wherever they are built, what percentage of U.S. steel do they use in their foreign fabrication yards?

Mr. FRANKLIN. Zero.

Senator BREAUX. Avondale is a major ship builder as well as a major fabricator of these pieces of offshore equipment, and I guess you had a choice to make in your concerns, because Avondale is constantly and very eloquently lobbying the Congress for more ships to be built in U.S. shipyards and rightfully so.

But in this case Avondale is asking to grandfather 12 foreign built launch barges that will allow us to build the fabrication units. How did you arrive at that decision? Was it a tough decision, I mean you are unique in the sense that you have both shipbuilding and rig fabrication capability. Tell the committee, if you will, about the decision that Avondale has made.

Mr. DUPONT. Well Senator, we have a fabrication yard that builds offshore platforms. And quite frankly, we have to qualify to the oil companies for an opportunity to bid. It is quite obvious to us that if we built a launch barge we couldn't amortize its cost in the deepwater jacket fabrication and be an economical fabrication contractor. We would simply not get the work. It is an easy decision for us to make. We want to build the platforms. We want to employ American workers, the best price we can offer to our customer is one where the platform is transported on a foreign launch barge, an existing launch barge.

Senator BREAUX. MarAd, when they testified, said that the largest U.S. built, U.S. flagged, Jones Act qualified launch barge that they could identify, was one of 6,300 tons launch capacity.

And my question, when the U.S. built barges are available for usage by the industry, do you in fact use them? I mean are we just looking for the foreign barges to use them, or do you utilize the U.S.-built barges when they are available. That is the point that I need clarified.

Mr. DUPONT. Yes. Those barges are utilized. I think perhaps McDermott's representatives could speak to that.

Mr. FRANKLIN. Yes. In fact individual components of any structure are transported on U.S. flagged, U.S. owned vessel with coastwise priviledges. For instance, on any jacket structure, which is the main topic of launching, those are the units or the particular segment of a platform that requires the heavy launch barge. The deck sections and the production equipment and this type of stuff, this all is still transported on the U.S. made and coastwise certified vessel.

Senator BREAUX. How many, Mr. Franklin, launch barges does McDermott own of the large category of 12,000 tons launch capacity or more?

Mr. FRANKLIN. We have four.

Senator BREAUX. Of those four that McDermott owns that are foreign built, what percentage of them as a company, do you own—100 percent?

Mr. FRANKLIN. Yes.

Senator BREAUX. There is some suggestion, perhaps MarAd suggested it or it was suggested by someone, of a 75 percent ownership requirement for these launch barges. If that were to be adopted, what would that do to or for McDermott?

Mr. FRANKLIN. Well I think that would virtually create a monopoly, which I doubt would put us in a competitive situation again. It's just that we like operating an open competitive environment. And I think a situation like that would continue to also drive the clients into foreign markets.

Senator BREAUX. In fact, does anybody know of any foreign built, 12,000 ton or larger launch barges that are U.S. owned, other than the McDermott barges?

Mr. DUPONT. No.

Senator BREAUX. I would ask Mr. Heron and Mr. Dupont perhaps, how can we be competitive in building your platforms, your rigs, that are going to be placed in the offshore area and not be competitive in the construction of a larger launch barge?

Is it because of the technology with the platforms, or is it because they have already got an over supply of launch barges? Why couldn't you be competitive in going out today and building these large launch barges when in fact you are apparently competitive because of technology, or whatever, in building the large platforms and the rigs that you are towing out there?

Mr. DUPONT. Well Senator, I know that the large launch barges are more competitively built in foreign countries. We certainly know that just the history of the bidding process demonstrates that the barges are more competitively built in foreign countries.

82-999 0 - 88 - 5

The platform situation is one where we have our fabrication yards, and have had them for some 20, 25 years, and have developed the technology and are quite skilled at doing that work. We have better manhours and a better situation in that regard.

Senator BREAUX. Mr. Stocker, while you may feel like the odd man out, we appreciate your being here and will continue to work closely with the Shipbuilders council. I am pleased that, of course, you support a portion of the bill with regard to a U.S. built requirement for sludge barges and for dredge equipment, which is part of the bill. And I understand, certainly, the basic philosophical objection to any opening of the Jones Act requirements.

I have tried to approach this from a pragmatic standpoint. And to me the end result is that we are going to give American shipyards business that you eloquently point out, for instance on page seven, is going to provide a lot of jobs in our American shipyards because you say that for every mobile rig we are talking about 450 shipyard jobs. Furthermore, 1,200 indirect jobs in steel and related supply industries would be produced in the United States.

My concern is that we lose all of that if we do not utilize all of the existing equipment, which is probably in an overabundent supply, to take that final product out to the ultimate location.

Isn't that a legitimate concern that Avondale and McDermott and some of these fellows have expressed?

Mr. STOCKER. I won't dispute Mr. Chairman, that the economic arguments appear to be extremely powerful in this case.

Senator BREAUX. Let me ask some questions so we can find out where we are with large 12,000 ton launch capacity or greater launch barge situations.

Do you know, can you identify or tell us of any of these large launch barges with a launch capacity of 12,000 tons or greater that are currently under construction in any of our shipyards?

Mr. STOCKER. No. There are no barges under construction.

Senator BREAUX. Do you know or can you tell us of any contracts that exist in any U.S. shipyards for the construction of any of these large launch barges?

Mr. STOCKER. None that I know of.

Senator BREAUX. Do you know of anyone engaged in active discussions at this point with specifications and plans or what have you, for the construction of any 12,000 ton or greater launch barges?

Mr. STOCKER. None that I know of.

Senator BREAUX. Gentlemen, I think we have probably covered the areas that needed to be covered. I appreciate each and every one of you being here. Mr. Franklin, did you have something to add?

Mr. FRANKLIN. Yes. We have a correction Senator. I apologize. There is one other launch barge owned by a U.S. company, and that is the GATX barge.

Senator BREAUX. Who is that owned by?

Mr. FRANKLIN. That is the KLB-1. It is owned by GATX Corporation.

Senator BREAUX. Aren't they in bankruptcy?

Mr. FRANKLIN. I think they took it over from Kaiser Steel, who went into bankruptcy. The other correction was that four of the five U.S. owned launch barges are McDermott owned.

Senator BREAUX. Let me get that for the record. There are four U.S. owned launch barges that McDermott owns that are in the category of 12,000 tons or greater?

Mr. FRANKLIN. No, not U.S. built.

Senator BREAUX. I said U.S. owned.

Mr. FRANKLIN. U.S. owned, right.

Senator BREAUX. And all four of those are foreign built?

Mr. FRANKLIN. Yes, sir.

Mr. BALDWIN. Can we say for the record that a group of vessels which has been identified is 12 in number. Four of the vessels are owned by McDermott and then the other one, the KLB-1, is owned by GATX?

Senator BREAUX. U.S. owned.

Mr. BALDWIN. Yes.

Senator BREAUX. Operates in what area, the west coast?

Mr. FRANKLIN. The west coast.

Senator BREAUX. And then that would mean seven remaining in the category of 12,000 tons or greater are foreign built and foreign owned?

Mr. FRANKLIN. Yes sir.

Senator BREAUX. I think that clarifies it gentlemen. We thank you. We appreciate the excellent testimony. I would also say to this panel that there may be other questions submitted to you by some of the other members and we would appreciate a prompt response to the questions.

Senator BREAUX. With that, this hearing of the subcommittee will stand adjourned until further call of the chair.

[Whereupon, at 12:25 p.m., the subcommittee adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of Hon. Phil Gramm, U.S. Senator From Texas

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to submit this statement today in support of S. 1988. I would like to direct my comments toward the launch barge provision of this legislation, which is of particular concern to the state of Texas.

I am pleased, Mr. Chairman, that you are seeking an expenditious resolution of the problem currently facing the Gulf Coast fabrication industry. Their problem is indeed a critical one. As offshore drilling heads into deeper water, larger platforms are needed. As a consequence, launch barges with significant carrying and launching capacity are required to transport the platform jackets to their destination. In those situations in which a coastwise point is established, federal law requires that U.S.-built launch barges be used.

The problem facing U.S. fabricators is that no U.S.-constructed launch barge exists that is large enough to carry and launch these enormous platform jackets. Without a change in the current status of U.S. Customs law, U.S. fabricators will be precluded from bidding on future deepwater projects.

Mr. Chairman, administrative relief is uncertain, if not unlikely. The Customs Service is not expected to overturn its previous rulings in this area, and the possibility of a waiver is remote. Waivers of the Jones Act are granted on an extremely limited basis, and then only for national defense purposes. While I would argue that increased production of oil and gas on the Outer Continental Shelf is certainly in the best interest of our national defense, the Treasury Department has limited the use of this waiver with regard to the transportation of platform jackets.

Thus the problem falls to Congress to resolve in a timely fashion, and S. 1988 provides us with a proper solution. Unlike many proposals designed to help U.S. industry, this one imposes no artificial barriers which ultimately cripple American industry's long-term competitive position. S. 1988 merely lifts restrctions that now make it impossible for U.S. fabricators to compete.

What the U.S. fabricators are seeking is limited and narrow relief from Jones Act requirements, so that they can undertake certain offshore production work. Specifically, S. 1988 would allow platform jackets to be transported on those foreign-built launch barges in existence (or under construction) if: the barge is U.S.-flagged; has a carrying and launch capacity of over 12,000 long tons; and, there is no U.S. barge of lesser capacity capable of performing the work. I believe this to be a reasonable request.

In sum, the circumstances clearly warrant Congressional action:

(1) The U.S. fabrication industry is willing, able and ready to do business;

(2) We must be prepared to meet the future demand for deepwater production work; and

(3) Without relief, there is no question that U.S. fabricators will be denied the opportunity to bid for work on our own Outer Continental Shelf.

Mr. Chairman, I am sure you will agree that this is not the time to subject Texas and Louisiana companies to unnecessary restraints on their ability to compete. We came close last year to enacting this provision. I hope, now that the issues have been aired, the Senate can move forward quickly on this legislation. I want you to know that I actively support your effort and encourage Members of your Committee to support the launch barge legislation.

Statement Submitted by the American Petroleum Institute

The American Petroleum Institute (API) appreciates this opportunity to submit its statement in support of Senate Bill 1988, "Amendments to the Merchant Marine Act of 1920." The Institute is a national trade association representing the domestic petroleum industry. API's membership of some 200 companies and 5,000 individuals comprises a broad cross-section of the industry's functions, including exploration, production, transportation, refining and marketing.

As you are aware, prior to 1985 the U.S. Customs Service permitted foreign-built launch barges to carry platform jackets to be used for offshore petroleum production from U.S. fabrication yards to a point on the high seas where the jacket was launched from the barge. The jacket was then towed by a coastwise certified vessel to its installation site at a coastwise point on the outer continental shelf (OCS), a procedure known as dual mode movement.

In January 1985, the Customs Service reversed its earlier ruling allowing such dual mode movement. This change, in essence, required that coastwise certified launch barges be used to carry platform jackets from U.S. fabrication yards to OCS coastwise points. The proposed legislation would again provide domestic platform jacket fabricators access to the international fleet of deepwater launch barges.

The American Petroleum Institute supports passage of S. 1988 for the following reasons:

First, there are no American-built launch barges having a carrying capacity of 12,000 long tons or more for transporting deepwater jackets and none are likely to be built. The limited U.S. market and the highly competitive world market, with its eleven 12,000-plus-ton barges, discourage the investment of the $40 million to $50 million needed to construct such a barge.

Second, there are ten OCS lease sales scheduled for the Gulf of Mexico over the next five years. Deepwater offerings are expected to be an important part of these sales. The restriction on the use of foreign-built launch barges could be a disincentive on bidding on deepwater leases.

Passage of S. 1988 would correct the problems brought about by the change in Customs Service procedures and allow the platform jacket transportation that is essential to the economic and timely development of OCS deepwater leases. It would also encourage domestic fabrication of deepwater platform jackets destined for U.S. coastwise points. In turn, this would provide jobs for Americans in the fabrication and offshore support industries.

For these reasons, API strongly urges the passage of S. 1988.

STATEMENT OF H. ALLEN FERNSTROM, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE AMERICAN SHIP BUILDING COMPANY

Mr. Chairman, Members of the Subcommittee: I am H. Allen Fernstrom, President and Chief Executive Officer, American Ship Building Company. I appreciate the opportunity to present American Ship Building Company's views on S. 1988.

The overall effect of this bill on American Ship Building Company's interests will be very positive. Our Nashville Division, Nabrico, is one of the last remaining barge builders on the inland waterways. A signficant portion of Nabrico's work involves constructing sludge barges for at-sea disposal of municipal wastes. We are very pleased that this bill will make clear that such activity within the Exclusive Economic Zone is protected by the Jones Act.

As you are by now all aware, and as made clear by the excellent testimony of the President of the Ship Builder's Council, Mr. John Stocker, the U.S. commercial shipbuilding industry is experiencing its most significant downturn in our nation's history. As one of the surviving shipyards, we recognize that our role in providing a heavy industry base for our nation's economic health and defense has become even more significant. Therefore, I feel compelled to express reservations to the protection of foreign-built launch barges, on three grounds:

1) We oppose *any* weakening of the Jones act;

2) The required launch capacity for permissible barges should be higher than 12,000 tons;

3) The proviso is overly broad, and may have unforseen effects in other areas beyond its application to launch barges and on requirements for U.S. citizenship.

1. As regards the first issue, I must echo Mr. Stocker's comments. We believe that the Exclusive Economic Zone should mean what it says, and that activities within the Outer Continental Shelf (OCS) should be subject to "Buy American" standards. U.S. citizens, and not employees of foreign manufacturers, should reap the full benefits of resources in our Exclusive Economic Zone.

The proviso protecting foreign built launch barges will serve to weaken, rather than strengthen Jones Act protections. Such a policy could not come at a more unfortunate moment for those of us who continue to seek out work in commercial shipbuilding. Therefore, I must express strong reservations about this provision. We will continue to ask that your actions strengthen rather than encroach upon Jones Act provisions.

The President's Commission on Merchant Marine and Defense pointed out that:

"The Commission finds that the cabotage laws are still needed and that they do contribute significantly to providing the ships and merchant seamen required for our national defense and economic security."

The Commission's specific recommendation is:

"The Administration and Congress should support the existing cabotage laws (referred to as the Jones Act), and should resist any attempts either to weaken or to eliminate them."

We agree wholeheartedly with the Commission's recommendation.

2. In discussing the tonnage requirements, please allow me to take a moment to tell you about our Tampa facility. Our Tampa Shipyards, Inc., Division has one of the most modern and efficient shipyard complexes in the country. The shipyard underwent a major 60 million dollar expansion preceding and during the very successful program to build five T-5 tankers for charter by the Military Sealift Command. The modular construction techniques, developed and used at this facility, resulted in a completed contract ahead of schedule and under budget. We have been informed by the charterer that in 1987, all five ships experienced only 25 hours of downtime, or 5 hours per ship, in the entire year. We are very proud of this remarkable record. Because of these modern techniques, we have become much more competitive in our pricing.

Our expanded shipyard can build vessels well in excess of the 12,000 ton minimum launch capacity of the barges referred to in this provision, and if the Committee deems it wise to allow foreign built vessels to operate in Jones Act transport, we would hope that the minimum launch capacity tonnage specified be much greater than 12,000 tons.

3. Finally, we are concerned that the launch barge provision grandfathers not only existing vessels, but allows for those "under construction by the date of enactment" to be used in the EEZ . The exact number of vessels to be included therefore cannot be determined accurately. In addition, there is no requirement in the bill for 75% U.S. citizen ownership of the barges. Again, this is a major departure from our coastwise law. Even in a case where foreign built vessel has been allowed into the domestic trade, the U.S. citizenship requirements have been consistently adhered to. There can be no valid reason for "dropping" U.S. citizenship requirements.

In summation, we urge speedy passage of the principal purpose of this bill, which is to include "valueless material" in the Jones Act definition of "merchandize." However, we must voice strong reservations about the proviso regarding launch barges, which we find to be a dangerous precedent and erosion of the Jones Act mandate to ensure our nation has sufficient shipbuilding capacity to defend our nation's vital interests.

Thank you for this opportunity to express our views on this important subject.

Statement of GATX Leasing Corporation

GATX Leasing Corporation submits the following statement in support of that portion of S. 1988 which would permit the use of specially designed foreign-built super launch barges in the movement of deep water jackets from a U.S. shoreside point to a point on the OCS.

GATX leasing has a direct interest in the issue. It owns the *KSC-700*, a "super" launch barge specially designed and built to transport the support structure, called the "jacket," of large deep water offshore production platforms used for oil production. The *KSC-700* has the largest maximum working capacity of existing launch barges—50,000 long tons—and is the longest such barges—700 feet. A larger, foreign built barge, 850 feet in length is under construction.

The ability to utilize such foreign-built super launch barges as the *KSC-700* in conjunction with large offshore deep water platforms erected in U.S. waters is essential to U.S. fabricators.

Initially, it is important to recognize that the U.S. industry which is actually affected by the launch barge provision in S. 1988 is the U.S. offshore energy industry, in particular U.S. fabricators of large deep water platforms, not the domestic maritime industry. This is so because the large launch barges involved are unique in their physical characteristics and use. As a practical matter, because of their design and cost they represent truly special purpose equipment which will only be used to transport oversized jackets or large deep water platforms. Such movements are complex, expensive, time consuming and occur on what can only be termed an infrequent basis. Such equipment is, as a practical matter, dedicated to the movement of larger platform components.

Platform projects are put to bid by energy companies on a worldwide basis. Foreign builders, because of lower labor and material costs, can produce jackets for offshore platforms at significantly lower prices than can U.S. fabricators. However, on a total cost basis, U.S. fabricators can be competitive. This is because the transportation costs for overseas builders are much higher than for U.S. fabricators. The shorter delivery distance, transit time and the lower cost (including lower risk) involved in transporting platform structures from U.S. fabrication yards to deep water offshore OCS sits provide domestic fabricators with a significant transportation cost edge to counter foreign builders' lower material and labor costs. That advantage is a critical factor which helps enable domestic fabricators to compete for this important work.

The fact is, however, that the only specialized super launch barges in existence which can transport the large deep water platforms are foreign-built and, therefore, not presently qualified for the Jones Act trade. There are no U.S.-built launch barges in existence with the capacity required to transport these over-sized deep water jackets. Moreover, in GATX Leasing's view, there is little if any chance that such barges will ever be built in the United States. Kaiser Steel Corporation, the prior owner of the *KSC-700,* and then a major U.S. platform fabricator, had the barge built in Korea in 1985 only after first undertaking an exhaustive study to determine whether it would be economically feasible to build such a barge in the U.S. The study established that it simply was not economically feasible to build in the U.S. as construction costs in a domestic shipyard would be more than twice those in a foreign yard. With sharp competition from foreign fabricators, for a U.S. fabricator to pay more than twice the cost for constructing a specialized launch barge in the U.S. effectively negated the only area in which the U.S. fabricator had an edge. (The double cost also meant a new U.S.-built launch barge would have a resale or charter value of less than half its purchase price as it would be competing on a world market with foreign barges built at less than half the cost. It makes no economic sense to build such a barge in the U.S. at a cost of many millions of dollars, only to see its value on the world market literally halved on the date it was launched.)

Until the Customs Services's ruling in C.S.D. 85-9, U.S. fabricators as a consequence of a constant line of previous Customs rulings were able to utilize foreign-built launch barges in dual-mode movements of deep water jackets from U.S. shoreside points to the OCS. The precedent of the ruling in C.S.D. 85-9, which did not involve the use of launch barges, would nevertheless prevent their use for the future. The proposed provision in S. 1988 dealing with launch barges would reverse that precedent insofar as it applies to the use of foreign-built over-sized launch barges. Without its passage, U.S. fabricators will be unable to continue to compete for fabrication of deep water platforms to be sited in U.S. OCS waters as they will have no means available to transport the deep water jackets to OCS sites.

The great irony here is that foreign fabricators of deep water platforms are free to use foreign-built launch barges to deliver their jackets to U.S. OCS sites as such movements are in the foreign commerce of the United States and not subject to Jones Act restrictions. This certainly is an unintended result of the Jones Act, the purpose of which is to protect and support U.S. industry. Inadvertent though it may be, the application of the Jones Act in C.S.D. 85-9 produces exactly the opposite effect. Indeed, given the highly specialized mission and the limited number of super launch barges, GATX Leasing is of the opinion that these specialized barges should be considered more like jackets than vessels.

GATX Leasing respectfully submits that Section 1(2) of S. 1988 which would permit specially designed foreign-built super launch barges to be used in the movement of deep water jackets from U.S. shoreside points to a point on the OCS should be enacted. To do otherwise would do serious if not irreparable harm to the U.S. fabrication industry and the U.S. owners of foreign-built super launch barges, including GATX Leasing. At the same time, passage would cause no real injury to U.S. interest, including those whom the Jones Act is designed to protect. Indeed, it would provide work for U.S.-flag tugs. There are no U.S.-built launch barges of this size in existence now and in GATX Leasing's view none would be built in U.S. shipyards because of the lack of economic feasibility of such project.

STATEMENT OF THE NATIONAL ASSOCIATION OF DREDGING CONTRACTORS

Thank you, Mr. Chairman for inviting the National Association of Dredging Contractors to testify on S. 1988.

The NADC fully supports the provision of the bill which clarifies that the Jones Act applies to the transport of valueless material, and any dredged material regardless of whether it has commerical value, from a point or place in the United States, or a point to or from a place on the high seas within the exclusive economic zone (EEZ).

The bill makes it clear that United States coastwise trade laws extend beyond the territorial sea (three nautical miles from shore). By so doing, the bill ensures that the transportation of sewage sludge and dredged materials be transported in vessels constructed in the United States, with 75 percent ownership vested in U.S. citizens, manned by U.S. citizens, and documented for coastwise trade.

During the past decade, our industry has invested hundreds of millions of dollars in building technologically advanced dredging equipment. Our state-of-the-art hopper dredge fleet is the finest in the world. All of our vessels, including ocean-going scows, have been built in American shipyards.

However, unless our coastwise trade laws are extended beyond our territorial waters to the EEZ (200 nautical miles from shore), transportation of valueless material, as well as dredge material of commercial value, will in the future be dominated by vessels built in foreign shipyards with cheap labor and foreign government sponsored subsidies. Foreign-owned dredges would soon take over the market in dredging and transporting materials to the high seas and from a point or place on the high seas to a point or place in the United States.

Section 5 of the bill "grandfathers" the dredge "Columbus", owned by B&B Dredging Corporation, which is predominantly controlled by a Dutch dredging firm. We have no objection to this section, or to the amended language proposed by B&B, providing the committee report clearly states that the purpose of this section is *only* to preserve the existing limited privileges of the dredge "Columbus" for carriage of valueless dredge material, as defined in U.S. Customs Ruling VES-10-02-R:CD:C 102446 CR/102173 dated December 7, 1976, and that the intent of this section is not to expand its present privileges for carriage beyond existing coastwise trade laws.

We strongly urge the committee to favorably report this urgent and necessary legislation. We appreciate the opportunity to testify before the committee on this most important legislation. Thank you.

STATEMENT OF LEO V. BERGER

I am Leo V. Berger, President of Apex Marine Corp. and various companies often referred to as the Berger group. I appreciate the opportunity to submit this statement before this subcommittee on S. 1988, a bill which would extend the Jones Act to the carriage of U.S. domestic origin municipal sewage sludge for ocean dumping purposes. This subcommittee is familiar with the various Berger group entities which own and operate United States-flag liquid and dry bulk vessels in both the international and domestic trades. Members of the Berger group also have an interest in National Seatrade, Inc., a New York corporation, which is the company which competitively won and is currently performing a long-term contract for the transportation and ocean dumping of municipal liquid sludge waste for Nassau County, New York.

National Seatrade bid this contract on the basis of and is utilizing a 35,000 DWT U.S.-flag barge which does not have Jones Act privileges. The barge was built abroad and was operating under foreign-flag when it was acquired for use in the project. National Seatrade oversaw the reflagging of the vessel in a U.S. East Coast shipyard, and the barge is being used successfully in performing National Seatrade's obligations under its contract with Nassau County.

National Seatrade is utilizing that reflagged barge because those were the rules of the game when it had to bid for the Nassau County contract in open competition. Other bidders bid on the basis of utilizing foreign-flag equipment, and so, despite National Seatrade's intention to reflag U.S., it was necessary competitively to acquire a less expensive foreign-flag barge. Had S. 1988 passed and become law at that time, of course, National Seatrade would have utilized a fully qualified Jones Act barge. Both the owner, August Shipping, Inc., and National Seatrade have a substantial investment in the barge, and it would work an untenable hardship on both if S. 1988 were to pass without grandfathering in its vessel. In addition, with the passage of S. 1988, the barge would then be considered a vessel in domestic commerce, requiring permission from the Secretary of Transportation pursuant to Section 805 of the Merchant Marine Act, 1936 (46 U.S.C. § 1223) in order to be affiliated with any contractor awarded or paid any subsidy within the meaning of that section. Accordingly, it is necessary to grandfather the vessel under § 805(a) also.

S. 1988 as drafted accommodates both concerns. With those provisions, I heartily support S. 1988.

Our companies have staunchly defended the Jones Act for several decades. Berger group companies have built more ships in the U.S. than any other independent U.S.-flag operator over the last 15 years. It was the Berger group who proposed and worked with this Committee to achieve the extension of the Jones Act to the carriage of U.S. domestic hazardous wastes for at-sea incineration. S. 1988 would continue that initiative to its rightful conclusion by including also municipal sewage sludge for disposal at sea.

With the dismal status of the international shipping trade—generally as a result of foreign subsidies and massive worldwide overtonnaging—the best hope for revitalizing the U.S. merchant marine is in expanding the scope of opportunities for employment. The Berger group believes that expansion from pure transportation directly into, and in support of, industrial offshore uses, presents both a great challenge and a worthwhile opportunity for the U.S. flag.

I pledge the support of our group for the passage of S. 1988. We congratulate the Chairman for his leadership on this matter and look forward to working with the Committee and its staff on this forward reaching proposal. Thank you.

STATEMENT OF SHELL OFFSHORE INC.

Shell Offshore Inc. (SOI) appreciates the opportunity to submit comments in support of S. 1988. Our comments address the section of S. 1988 pertaining to barges used for transporting and launching deepwater oil and gas platform jackets on the U.S. Outer Continental Shelf (OCS).

We currently operate more than 100 major platforms on the U.S. OCS. Our Cognac Platform in 1025 feet of water in the Gulf of Mexico is the tallest platform in the world. Our Bullwinkle platform now under construction near Corpus Christi, Texas, will set a new water depth record at 1353 feet when it is installed later this year.

We currently are studying the commercial potential of numerous Gulf of Mexico prospects in greater than 1500 feet of water. One production system under serious consideration is a tall, steel platform called a compliant tower, which must be built in two sections and connected under water at the proposed location. Installation of the base section would establish the site as a coastwise point and subsequent transportation of the top section from a U.S. fabrication yard would constitute coastwise-trade. The Jones Act requires the use of American-built vessels in coastwise trade. However, no American-built launch barges exist for transporting deepwater jackets of this size. In fact, of the 35 launch barges available in the free world only 12 - all foreign built - have a carrying capacity (12,000 tons or greater) sufficient for handling such large platforms.

These large launch barges compete in a worldwide market for a very limited number of jobs. Most of these vessels are used only once a season, sometimes waiting two to three years for an assignment. These barges are specialized additions to an international construction company's suite of equipment, and do not engage in routine transportation commerce.

When considering the economics of a proposed deepwater development program, we ask a construction company to submit a bid that includes fabrication, transportation and installation. Under current law (since 1985), bidders planning U.S. fabrication of a deepwater jacket destined for a U.S. coastwise point must provide an American-built launch barge. The U.S. fabrication of a large deepwater launch barge would cost an estimated $40-50 million. Because of a limited market, a major portion or all of the cost of the barge must be included in the bid. Conversely, bidders planning fabrication of the jacket at a foreign location would not need to include the cost of an American-built launch barge, because existing foreign barges can transport jackets to the U.S. OCS from foreign ports. Clearly, the company proposing foreign fabrication would be advantaged as the increased cost of transportation from the foreign fabrication yard would normally be less than the cost of providing a new launch barge in the U.S.

SOI and other companies who explore in deep water face a serious dilemma. Even in those instances where the fabrication could be done most economically in the U.S., current law gives substantial advantage to foreign assembly of deepwater two-piece structures because of the requirement to use an American-built launch barge. Further, it seems unlikely that anyone will find it profitable to build a deepwater launch barge in the U.S. At present the increased cost of building such a barge domestically would make it noncompetitive in the international market. In the U.S. the potential number of jobs for such a barge is so few that the cost share per job would be unreasonable.

In summary, certain provisions of the Jones Act give substantial economic advantage to foreign fabrication of some deepwater structures. The passage of S. 1988 will correct these problems and encourage domestic fabrication of such structures. This, in turn, will provide jobs to Americans in the fabrication industries and in a multitude of offshore support industries which will benefit from OCS activity.

We strongly urge passage of S. 1988.

STATEMENT BY HARVEY W. SCHULTZ, COMMISSIONER
NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

I am pleased to have this opportunity to comment on issues relating to S. 1988.

New York City's position with regard to the effect of S. 1988 is unique. Amending the Merchant Marine Act of 1920 (the Act) to include sewage sludge would mean that New York City would not be able to use its foreign-built barges for the transportation of sewage sludge to federally designated disposal sites. Barges were needed by New York City in order to comply with USEPA's requirement that disposal operations be transferred to the Deepwater Disposal Site. Before awarding the construction contract, the City requested a ruling from the Customs Service on the applicability of the Act to a sludge transporting operation. Since the Customs Service advised that Section 883 of the Act would not apply, the City awarded the contract to the lowest responsible bidder, as it was bound by law to do.

When the House of Representatives last year considered expanding the jurisdiction of the Act in the manner of S. 1988, we had already begun our barge construction program -- one was finished and on its way, another was near completion and a total of four barges was contracted for. We testified and stated that an amended Act should not prevent us from using barges for which we lawfully contracted. The Subcommittee of Merchant Marine concurred, and H.R. 82 was amended to include an exemption for these barges. S. 1988 includes a comparable exemption. However, due mostly to changed circumstances, I now believe the exemption may still fail to provide needed protection.

The exemption is tied to the barges being used to transport sewage sludge to the Deepwater Disposal Site. This would seem quite reasonable since that is the purpose for which they were built. However, the future of ocean disposal has become less certain, and it is possible that some action will be taken by Congress to prohibit ocean disposal. All of the remaining disposal options would include a land-sited facility. Under these circumstances, the City would need to use these barges to transport the sludge from treatment plant locations to such a facility. However, the exemption for these barges would no longer apply, since they would not be transporting sludge to the Deepwater Site as required by S. 1988 as written.

The exemption also contains an "either/or" condition: the vessel has to be either under construction on the date of enactment or under contract with a municipality for the transportation of sludge on the date of enactment. Our four barges are finished and in use, and we own them, so we would not be able to meet either condition stated in the bill. Therefore, even if disposal at the Deepwater Site remains available, our barges would not be covered by the exemption as written, since we would not meet either branch of the condition. These are technical conditions which should be adjusted in the bill.

Furthermore, the relationship between this exemption provision and Section 883 of the Act is unclear. As written, the two could be read together so that the "built in the United States" requirement of Section 883 would still apply. Clearly this defeats the intended purpose of the exemption.

For a host of reasons our barges should be protected. New York City, therefore, has taken the liberty of attaching a re-draft of Section 3 of S. 1988 which is responsive to these changed circumstances. We are available to work with your staff to develop an alternative revision if necessary. Since New York City will under all circumstances need its barges to collect and transport sludge from its treatment plants, we urge you to amend S. 1988 so that we may lawfully continue to do so.

Thank you for the opportunity to express New York City's views and concerns.

santa fe international corporation 1000 South Fremont Avenue • Box 4000 • Alhambra, California 91802-4000

January 27, 1988

The Honorable John Breaux
Chairman, Merchant Marine Subcommittee
Senate Committee on Commerce, Science and
Transportation
Room SH516, Hart Senate Office Building
The United States Senate
Washington, DC 20510

Dear Senator Breaux:

Re: S 1988

The Santa Fe International Corporation recently became aware of the introduction of S 1988 and understands that hearings on this bill are to be conducted tomorrow before the Merchant Marine Subcommittee of the Senate Committee on Commerce, Science and Transportation.

While we wholeheartedly support this legislative effort to exempt certain existing foreign built launch barges from the coastwise trading prohibitions, we respectfully request that consideration be given to modifying the qualifying language of S 1988 in a fashion which will cover all existing U. S. flag launch barges which exceed the capacity of the largest coastwise trade qualified unit.

Our wholly owned subsidiary, the Santa Fe Offshore Construction Company, is the owner of the launch barge SF 4000. This barge was built by China Shipbuilding Company of Taiwan in 1978 and has spent her entire life off the coastal waters of the Untied States. The barge is documented under the laws of the United States and was built in reliance upon rulings obtained from the United States Customs Service stating that transportation or launching of offshore jackets or platform structures by this unit would not be considered coastwise trade under the Jones Act. However, the interpretation of coastwise trading in relation to launch barges has since been modified in a manner which warrants legislation such as S 1988 to clearly exempt large foreign built launch barges documented under U. S. law from the coastwise trading prohibitions.

The SF 4000 is 400 feet in length with a maximum carrying capacity of 10,000 short tons. As written, S 1988 would not cover the SF 4000 since it does not have a carrying capacity of 12,000 long tons or more.

Based upon research we have conducted, it appears the largest coastwise trade qualified (U.S. built) barge is 380 feet in length and does not have a carrying capacity which exceeds that of the SF 4000. We believe a realistic approach to this legislative effort would be to exempt all existing U. S. documented launch barges with a capacity in excess of the largest coastwise trade qualified unit. Accordingly, we respectfully suggest that consideration be given to modifying the language of S 1988 to extend its coverage to existing U. S. documented launch barges with (1) a carrying capacity of 10,000 short tons or more or (2) a length of 400 feet or more.

Your careful consideration of our comments sincerely will be appreciated.

Yours very truly,

Cary A. Moomjian, Jr.
Divisional Vice President

santa fe international corporation 1000 South Fremont Avenue • Box 4000 • Alhambra, California 91802-4000

February 3, 1988

The Honorable John Breaux
Chairman, Merchant Marine Subcommittee
Senate Committee on Commerce, Science and
Transportation
Room SH516, Hart Senate Office Building
The United States Senate
Washington, DC 20510

Dear Senator Breaux:

Re: S 1988

Further to our letter of January 27 (a copy of which is enclosed for your ready reference), we are writing to provide further data in support of our request that S 1988 be revised in a fashion which will extend the contemplated coastwise trading exemption to cover our subsidiary's launch barge SF 4000. In essence, we believe this bill should cover all existing U.S. flag launch barges larger than the biggest U.S. coastwise trade qualified launch barge.

Enclosed is a chart which lists all 21 launch barges we have identified as being available for service in U.S. coastal waters. This enclosure identifies each barge, its owner, location, size, flag and place of construction. As noted on the chart, it appears the largest coastwise trade qualified (U.S. built, U.S. owned and U.S. flag) barge is Brown & Root's "Bar 267," which is 380' in length. Accordingly, we believe it would be appropriate for the exemption contemplated under S 1988 to include all existing U.S. flag launch barges of a length in excess of 380'. Alternately, the bill could be modified to cover existing U.S. flag launch barges with a deck carrying capacity of 10,000 short tons or more. We believe this also would be an appropriate criterion to cover existing U.S. flag launch barges which exceed the capacity of the largest coastwise trade qualified unit.

We believe another compelling reason for including the SF 4000 within the exemption coverage of S 1988 is the fact that the barge was built in reliance upon rulings obtained from the U.S. Customs Service stating that the barge, although foreign built, lawfully could launch jackets or other structures in U.S. waters without violating the coastwise trade provisions. In this regard, we enclose copies of our communications to and from the U.S. Customs Service dated October 26, 1977, November 11, 1977, December 2, 1977, December 8, 1977, December 23, 1977, April 26, 1978 and May 5, 1978. As disclosed in this exchange of correspondence, the undersigned personally met with U.S. Customs representatives in Washington during December of 1977 to obtain further clarification of the Customs Service rulings regarding coastwise trade applicability before we decided to build the SF 4000 in Taiwan. In essence, we were advised that a foreign built launch barge may lawfully transport a jacket and related equipment from a point in the United States and launch same in U.S. Outer Continental Shelf waters where there is no existing fixed structure. The interpretation of coastwise trade has changed, thus necessitating a statutory exemption for existing units as is contemplated in S 1988.

Based upon the foregoing, we sincerely believe it would be appropriate to modify S 1988 in a fashion which will exempt all existing U.S. flag launch barges of a size which exceed the largest existing coastwise qualified unit. We believe this would be an appropriate legislative resolution of the situation, especially so since our decision to construct the Santa Fe 4000 was made in reliance upon rulings received from an agency of the U.S. Government stating that the barge could lawfully launch structures in U.S. waters.

We would be pleased to respond to any questions you, your staff or the Subcommittee staff may have concerning this matter. We also would hope to have an opportunity to personally discuss our position with you or your staff in the near future.

Yours very truly,

Cary A. Moomjian, Jr.
Divisional Vice President

Brown & Root, Inc. Post Office Box Three, Houston, Texas 77001
A Halliburton Company

[redacted]
Vice President
Executive Relations & Corporate Affairs (713) 676-3305

January 21, 1988

The Honorable John Breaux
United States Senate
Washington, D.C. 20515

Dear Senator Breaux:

In lieu of formal testimony, we are writing you to urge early enactment of S. 1988. Brown & Root, Inc. strongly supports passage of your bill which would amend the Merchant Marine Act of 1920. The amendment would allow fabrication in the United States of deepwater offshore platform structures. Under a 1984 Customs ruling, transportation of such deepwater platforms must be carried on coastwise certified launch barges. The 1984 ruling reversed an earlier Customs ruling allowing us to carry platform jackets on non-coastwise certified launch barges. There are no existing U.S. built launch barges capable of launching deepwater platforms. In deepwater, these platform jackets can be very heavy and only a small handfull of barges (all foreign-built) can adequately transport them.

Because of the uncertainty of the offshore deepwater platform market, no private company could justify the investment required to build a new launch barge in the United States. Attempting to write such an investment off against the development project would undoubtedly derail it based on project economics. Worse yet, unless S. 1988 is enacted, U.S. fabricators will not even be permitted by U.S. oil companies to bid on deepwater platforms because there would be no legal way to transport the platform jacket to the OCS.

Compliance with the existing law as interpreted by the 1984 Customs ruling, would require the export of at least 1,000,000 manhours of fabrication labor to locations outside the United States for just one structure. S. 1988 therefore would provide a ray-of-sunlight in the depressed Gulf Coast platform fabrication business. We urge its early enactment and congratulate you for introducing this much needed legislation.

We would deeply appreciate your including this letter in the record of the hearings on S. 1988.

Sincerely,

Joe M. Stevens

Joe M. Stevens, Jr.

Bethlehem Steel Corporation

BETHLEHEM, PA 18016

January 26, 1988

The Honorable John B. Breaux
Chairman, Merchant Marine Subcommittee
Senate Committee on Commerce,
Science and Transportation
Washington, DC 20510-6125

Attention John Hardy

Dear Mr. Chairman:

Your invitation to testify at the Merchant Marine Subcommittee hearing on S. 1988 is very much appreciated. Unfortunately, previously scheduled business commitments preclude my ability to appear at the hearing on January 28, 1988.

I have had discussions regarding the provisions of this bill with John Stocker, President of Shipbuilders Council of America. As you know, Mr. Stocker will be a witness at the hearing and his testimony will articulate Bethlehem Steel's position with regard to the provisions of S. 1988.

The commercial business opportunities available to domestic shipyards have reached an all time low. Any weakening of the Jones Act will even further reduce the few remaining business potentials. We support the Senate in taking action to protect American interests in competing for platform jackets. However, such action should not be taken at the expense of other American business opportunities which is the case for the proposed launch barge provision. A long-term solution to the problem would be to expand Buy American provisions to include drill rigs and production platforms used in the exploration and production of oil and gas in the Outer Continental Shelf. Such a provision will help assure our energy independence and provide opportunities that will keep our shipyards intact which is essential for an adequate defense mobilization base.

Again, I regret that I will be unable to testify but look forward to future opportunities to participate in Merchant Marine Subcommittee hearings.

Sincerely,

D. H. Klinges/eh

D. H. Klinges
President, Marine Construction

National
Marine Engineers'
Beneficial
Association

Affiliated with the AFL-CIO

444 North Capitol Street • Suite 800 • Washington, D.C. 20001 • 202 [illegible]

January 27, 1988

The Honorable John B. Breaux
Chairman
Subcommittee on Merchant Marine
Committee on Commerce, Science
and Transportation
U.S. Senate
Washington, D.C. 20510-6125

Dear Mr. Chairman:

Thank you for your invitation to testify on the subject of S. 1988, amendments to the Merchant Marine Act of 1920. Unfortunately, I will be out of town tomorrow, so I will not be able to appear in person, but I would like to submit this letter concerning the bill and ask that it be included in the record of the hearing.

I want to begin by stating unequivocally that I support S. 1988, and I commend you for its introduction.

Let me first comment on the provisions of this bill which, in essence, apply the Jones Act to the transport of valueless material, such as sewage sludge or dredged material, from a point in the United States to another point in the United States or to a point on the high seas in the Exclusive Economic Zone. These provisions will provide jobs for the American merchant marine and, equally important, they will provide work for America's hard-pressed but vital steel and shipbuilding industries. At a time when both the operating and building components of our nation's overall maritime industry are in a steep decline, these provisions offer a "shot in the arm" to an industry that needs it badly. I should note that the recently-released (January 25, 1988) "Recommendations" of the Commission on Merchant Marine and Defense appear to have a very broad interpretation of the potential application of the Jones Act. It is an interpretation with which I fully agree.

There are some who will say that the provisions in your bill represent an "expansion" of the Jones Act. This simply is not true. These provisions are well within the spirit of the Jones Act, but involve technology and situations that just could not have been envisioned in 1920. I think that no one would disagree that had these issues come up in 1920, they would, most certainly, have been included in the original Act. So, one should call these provisions a "clarification" not an "expansion" of the Jones Act.

C. E. DeFRIES, President
C. E. DODSON, Secretary-Treasurer
R. T. McKAY, Executive Vice President
A. P. SASSO, Vice President
M. H. PELFREY, Vice President

Furthermore, anyone who objects to these provisions should just take a quick look around the world. Would an American sewage sludge barge be permitted to operate in Japanese or French waters? Nations such as these, and many others, sustain and cultivate their maritime industry. Yet, in the United States, with far greater defense responsibilities, such policies are questioned or sacrificed on the altar of "free trade" that is neither free nor fair. This type of work is a growth area, and it is domestic by any definition of the word. I applaud you for taking these steps to see that the jobs and the maritime capabilities these provisions stand for become American and remain American.

The other principal provision in S. 1988 concerns launch barges. I realize that this provision is a matter of some debate, and I will not go into every legal detail as I am sure that they will be covered extensively by others. But I would like to make several points.

First, the launch-barge provision will benefit equitably a number of American companies. It is a generic exception, not a special-interest exception. For example, all OCS leaseholders, not one or two, can use any one of the 12 giant, foreign-built launch-barges in existence that would be permitted under this provision.

Second, the provision is a fair course taken to restore rights to operate that were recognized earlier but subsequently withdrawn by government regulations. It is important to realize that a number of American companies made substantial financial investments in good faith under the previous set of rules. Then they had the rug pulled out from under them. This provision merely "grandfathers" their good faith investment.

Third, rejection of this provision will not mean one more American job. It simply will mean that the companies which need platform jackets for offshore oil and gas production will buy them abroad in nearby nations such as Mexico, Venezuela, and Brazil. The launch barges of the size required for the job are simply not built in the United States, and no one expects them to be. So there is no U.S.-built alternative standing by, nor is there any anticipated. This launch-barge provision in S. 1988 will keep the steel and the fabrication jobs here in the United States. And as someone who has spent much of his life in Louisiana, I know that these jobs are vital to the economy of that state. Rejection will simply put these jobs on a fast boat to Mexico, and I do not see how such a development can serve the national interest. Indeed, if I were a paranoiac individual, which I am not, I would suspect that that State Department was pushing rejection of your provision in order to export American jobs as one more element in its Caribbean Basin Initiative!

Fourth, the launch-barge provision is a limited exception to the Jones Act for a specific purpose where there are no U.S.-built alternatives available. It permits only giant-size launch barges of 12,000 tons or more. It will, in effect, permit 12 existing giant-size launch barges to operate as if they were Jones Act qualified vessels. It does not -- I emphasize -- does not permit foreign-built launch barges to invade the smaller launch-barge market, such as those capable of transporting platform jackets of 5,000-7,000 tons, where there are U.S.-built launch barges available.

Fifth, if I were asked if I had any thoughts for how this launch-barge provision might be strengthened, I would urge consideration of two possible suggestions. One is that it might contain a provision so that if, in the future, U.S.-built, giant-size launch barges were constructed, they might have priority in this trade over the foreign-built ones. I myself feel that such an eventuality would be highly unlikely, but I advocate this addition for the sake of consistency as I believe that any exceptions to the Jones Act should always be thought of as temporary in nature with the eventual goal being full compliance. The second suggestion concerns compliance with the U.S. documentation laws that mandate 75 percent stock ownership by U.S. citizens in order to qualify for coastwise privileges. While I would not, in this case, oppose the launch-barge provision in order to achieve this, I do hope that the Committee will explore whether there is a way that the companies in question can comply now or in the future with this part of the law. It is a principle that no one wants to see eroded.

Mr. Chairman, in conclusion on the launch-barge provision, let me emphasize that we have no direct stake in it. It does not involve jobs for seagoing maritime unions. And let me emphasize as well that I am as strong a supporter of the Jones Act as anyone. But I do believe that, given the circumstances, the launch-barge provision in S. 1988 is eminently well-considered, reasonable, and fair. I urge the Committee and the Senate to adopt it. And let me reiterate in closing my full support for the entire bill. It is a good way to begin the new session -- not a grandiose plan that will take years to accomplish, but a practical step forward that can create jobs now.

Sincerely yours,

C. E. DeFries

C.E. DeFries
Presidnet

CED/kmb

National Marine Engineers' Beneficial Association

DISTRICT NO. 1—PACIFIC COAST DISTRICT, MEBA (AFL-CIO)

C. E. DeFRIES
President

CLYDE E. DODSON
Executive Vice President

KARL M. LANDGREBE
Secretary-Treasurer

R. F. SCHAMANN, Vice President, Atlantic Coast

C. W. DAULLEY, Vice President, Gulf Coast

April 5, 1988

Mr. Robert Eisenbud
Committee on Commerce, Science
and Transportation
566 Dirksen Building
Washington, D.C. 20510

Dear Mr. Eisenbud:

Pursuant to your request, enclosed are our responses to the seven-point question submitted by Senators Danforth, Packwood and Stevens as regards S. 1988.

Please do not hesitate to get in touch with me if you need any further clarification with respect to MEBA's position.

With kindest regards.

Sincerely,

Karl M. Landgrebe

Karl M. Landgrebe

KML/kmb

Enclosures

DO YOU BELIEVE THAT AN EXEMPTION SHOULD BE GRANTED FOR A LIMITED NUMBER OF FOREIGN-BUILT BUT U.S.-OWNED AND -CREWED VESSELS IF:

(1) Jones Act vessels are not exploiting a market for cabotage?

MEBA endorses the narrow exemption for large foreign-built launch barges as provided in S. 1988 inasmuch as there are no Jones Act-qualified vessels that can be used in this unique market. It should be noted that this exemption applies to unmanned launch barges, and, therefore, does not in any way impinge on U.S. seagoing employment. In our testimony, we urged consideration of compliance with the U.S. documentation laws that mandate 75 percent stock ownership by U.S. citizens in order to qualify for coastwise privileges. Although, as a practical matter, this recommendation may not be possible without causing further interminable obstacles for those in this business, it is a principle of law that MEBA would not wish to see eroded.

(2) There is no prospect of Jones Act vessels entering the trade so as to meet the demand for transport in that segment of the coastwise trade?

MEBA endorses the narrow exemption for foreign-built jumbo launch barges as provided in S. 1988 inasmuch as there is no prospect of Jones Act vessels entering the trade. The circumstances for this exemption, in our view, are unique. Authority had existed for the use of foreign-built barges, but that authority was later withdrawn owing to a subsequent reversal of Customs Service interpretation and ruling. Accordingly, this special case represents a grandfathering amendment to restore rights that were recognized and then withdrawn by government regulation. This sector of business -- OCS leasing and oil drilling -- is just starting to come out of the worst economic downturn in history. The Breaux launch barge exception will help, not hinder, U.S. interests with plans to increase exploration to the detriment of no one.

(3) Substantial economic loss results from the unavailability of vessels to transport the product in the coastwise trade?

MEBA endorses the narrow exemption for foreign-built jumbo launch barges as provided in S. 1988 because, without it, substantial economic loss would result from the unavailability of jumbo launch barges to transport platform jackets in the coastwise trade. One has to keep in mind that OCS leaseholders can function free of any Jones Act requirements now by using foreign, rather than American companies, engaged in the fabrication of platform jackets. This special corrective measure would preserve hundreds of U.S. fabrication jobs and insure that U.S. fabricators are not frozen out of the bidding process in the design, fabrication, and delivery of platform jackets.

(4) Alternate modes of transportation are not available to meet the logistical and economic needs of that market for timely delivery of a competitively priced product?

MEBA endorses the narrow exception called for in S. 1988 with respect to launch barges, in light of the fact that no alternate modes of transportation are available to meet the logistical and economic needs of this market. The only giant launch barges in existence worldwide -- twelve in all -- are foreign-built. Notwithstanding U.S. shipyard construction capabilities, no U.S. shipyards have plans underway or on the drawing boards to construct U.S. launch barges of the capacity needed. Moreover, no one has invested any capital and put it at risk based on Jones Act-qualified vessels being used. Were it not for the fact that Customs reversed itself, this issue would never have arisen and this provision would not be needed.

(5) The work and products in that segment of the economy are lost to foreign competition as a result of the above factors?

As stated above, the U.S. energy industry is just coming out of its worst economic period in history. It is reported that U.S. oil producers need to exercise some $5 billion worth of oil and gas leases in the Gulf of Mexico that will expire by 1990. This means a great deal of work, work that MEBA wants to see in American hands as much as possible. For the reasons stated earlier, with or without this exception, oil producers will proceed to exercise their leasing rights. U.S. fabricators having had the rug pulled out from under them by the Customs Service ruling will be the losers.

(6) Exempting a limited number of vessels to meet the market demand would likely result in more, rather than less, jobs in maritime related and other segments of the economy?

MEBA endorses this special exception because more, rather than less, jobs in maritime-related and other segments of the industry will result. It will, to be sure, preserve U.S. fabrication jobs; it will also help the hard-pressed U.S. steel industry. Seafaring jobs are not at issue as this exception applies to unmanned barges.

(7) The exempted vessels are precluded from competing with any future fully qualified Jones Act vessels that seek to engage in that trade?

As part of MEBA's statement for the record, we urged consideration of a provision that if, in the future, U.S.-built, large-size launch barges were constructed, that they have priority in this trade over the foreign-built ones. As matters now stand, S. 1988 would permit all OCS leaseholders to utilize any one of the twelve large launch barges in existence today -- vessels which are utilized on any given offshore project for just a few weeks out of the year. Although in our opinion such an eventuality is unlikely, we avocate this addition for the sake of consistency as we feel that any exceptions to the Jones Act -- no matter how worthy they might be -- should always be thought of as temporary in nature.

TRINITY MARINE GROUP TRINITY INDUSTRIES, INC.
P.O. BOX 29266 / NEW ORLEANS, LA 70189 / 6600 PLAZA DRIVE / NEW ORLEANS, LA 70127
504 245-8900 / TELEX 6821248 / TELECOPY 504 245 7689

January 26, 1988

Senator John B. Breaux
United States Senate
516 Hart Office Building
Washington, DC 20510

Dear Senator Breaux:

Although we are not appearing in person at the Hearing on January 28, 1988 in Washington, D.C., we would like to have our support of S.1988 documented in the record. S.1988 contains provisions which will significantly help U. S. Shipbuilders in the future.

The Sludge Barge and Dredge Barge Provision will reserve construction of all future sludge and dredge spoil dumping vessels for the U.S. Shipbuilders and thereby save hundreds of jobs for workers in the United States.

The Launch Barge Provision of S.1988 will allow the U.S. Fabricators to be competitive with the foreign fabricators when bidding of platform jacket jobs for the U.S. Offshore business. U. S. Shipyards will receive a direct benefit from the award of deepwater platform jacket projects to U.S. Fabricators. New deepwater projects in the Gulf of Mexico will employ existing support vessels and generate new construction in the U.S. Shipayrds for additional vessels as the surplus support vessels return to full employment status.

We urge you and members of your subcommittee to pass S.1988. We thank you for the opportunity to submit our comments for the record in the Hearing.

Sincerely,

TRINITY MARINE GROUP

John Dane, III
President

NATIONAL STEEL AND SHIPBUILDING COMPANY
A MORRISON-KNUDSEN COMPANY

HARBOR DRIVE & 28TH STREET
P.O. BOX 85278
SAN DIEGO, CALIFORNIA 92138
PHONE (619) 544-3400

REPLY TO: MORRISON-KNUDSEN COMPANY, INC.
1725 "K" STREET, N.W. SUITE 1102
WASHINGTON, D.C. 20006-1460
PHONE (202) 785-9036
TELECOPY (202) 785-9038

JAMES M. TEMENAK
DIRECTOR OF MARKETING
& GOVERNMENT RELATIONS

January 27, 1988

The Honorable Ernest F. Hollings, Chairman
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510-6125

Dear Senator Hollings:

In response to your January 14, 1988, invitation to testify on January 28, 1988, regarding S-1988, National Steel and Shipbuilding Company (NASSCO) has not taken a position on the specifics of this Bill because it deals with classes of marine equipment which are not our product line of ocean-going ships for commercial and Navy service. For this reason, we are hardly a knowledgeable witness as to the impact of this legislation. We are a member of the Shipbuilders Council of America and they are better versed on the broader issues of the impact of this Bill.

NASSCO is an ardent supporter of the sanctity of the Jones Act, however; and we have concern whenever a piece of legislation could adversely impact the only market for U.S. commercial shipbuilding in the United States. If any foreign-built equipment is granted permanent access to the Jones Act, the precedent could be devastating to future building of Jones Act ships in the United States.

Very truly yours,

James M. Temenak

James M. Temenak
Vice President
Washington Operations

JMT:f

cc: The Honorable John B. Breaux
United States Senate

EXECUTIVE COMMITTEE
E.F. GRIFFIN, JR.
Chairman of the Board
T.F. RIGAUD
President
RONALD J. ISAAC
Treasurer
DAN A. ROUSSEAU
Secretary

LOUISIANA SHIPBUILDING AND REPAIR ASSOCIATION

BOARD OF DIRECTORS
DAN ROUSSEAU
ERIK HOLLINGER
E.F. GRIFFIN, JR.
DAN GUFFANTIS
HARVEY WALFERT
LLOYD F. GAUBERT, SR.
RONALD J. ISAAC
MARK KURY
LUCIEN MORAGAS

SUITE 213, 5163 GENERAL DeGAULLE DRIVE, NEW ORLEANS, LOUISIANA 70131
TELEPHONE (504) 392-5757

March 10, 1988

The Honorable Ernest F. Hollings, Chairman
Senate Committee on Commerce,
Science and Transportation
125 Russell Building
Washington, D. C. 20510

Dear Mr. Chairman:

The Louisiana Shipbuilding and Repair Association wishes to advise you of its strong support on Senate Bill S.1988. We especially support the launch barge provisions of this legislation for the following reasons.

This legislation would allow continued employment in the fabrication yards of the American offshore oil platform fabricators. One domestic fabrication contractor has stated in testimony before the Senate Committee on Commerce, Science and Transportation on January 2, 1988, that the fabrication of one large deepwater platform creates over 500 jobs. We are aware of two (2) large platforms under fabrication in a Gulf Coast fabrication yard today (Standard Oil Company's platform for 483 ft. of water and Texaco's platform for 622 ft. of water) which will require the use of a foreign built launch barge. We have been advised that there are no alternative means available to transport these two platform jackets. Therefore, these two(2) platforms will create approximately 1,000 jobs, which did not exist in 1987, on the Gulf Coast.

We have learned that there are other deep water platforms under consideration which may be bid and awarded within the next couple of years, i.e. Shell Oil - 2,000 ft. -Popeye, Shell Oil - 1,200 ft. - Viosca 783, Marathon Oil - 1,300 ft. - Green Canyon 110, Standard Oil 1,250 ft.- Viosca Knoll, Tenneco - 2,600 ft.- Green Canyon 205 and Union Oil - 1,390 ft. - Mississippi Canyon 455. If these and other deepwater platforms are bid and awarded to American fabricators, many thousands of American workers will be employed.

If the launch barge provision is not enacted, then many of the platforms listed in the previous paragraph and other deepwater platforms in the planning stages may be fabricated in foreign fabrication yards because of the unfavorable 1984 Customs Service ruling. Ironically, these same deepwater platform jackets fabricated in foreign fabrication yards would be transported to the United States offshore destinations by the same foreign built launch barges to be grandfathered by Senate Bill 1988. The American worker will be the loser if this launch barge provision is not enacted.

The fabrication of deepwater platforms in American fabrication yards causes an increase in employment in the many thousands of businesses that provides goods and services to support the needs of the domestic fabrication yards. American jobs are created in the transportation of all of the commodities (i.e. pipe, steel plate, paint, machinery, equipment, etc.) needed to fabricate these platforms. Transportation can be by truck, rail, and/or water. The last method of transportation, water, is of utmost importance to the member companies of the Louisiana Shipbuilding and Repair Association. Our member companies build the barges, tugs, supply boats, crew boats and provide the maintenance and repair to these vessels which serve the offshore oil industry. The loss of deepwater platform jackets to foreign fabrication yards would certainly have an immediate adverse impact on the employment in our industry.

The manufacture of other items such as steel pipe and plate, paint, valves, flanges, cable, equipment, etc. cause employment in many industries and in many states across the United States. All of this employment outside of the fabrication yards would be adversely affected immediately as foreign fabrication yards would certainly use cheaper foreign made products and foreign services available to them in their own country. Therefore, the impact on the American worker when deepwater platform jackets are fabricated in foreign fabrication yards is felt not only by fabrication yard employees, but, also by many employees in diverse industries and service sectors in many other states.

We are not in favor of a U.S. owned provision in the language of Senate Bill S.1988. We understand that there are only five (5) U.S. owned foreign built launch barges of the size required to transport and launch deepwater platform jackets. Four (4) of these are owned by one U.S. company. The other U.S. owned barge is not used in the transportation of deepwater platform jackets and is located on the West Coast. Our opinion is that this U.S. owned provision would ensure one U.S. company with a monopoly to transport the deepwater platform jackets fabricated in all U.S. fabrication yards to areas in offshore U.S. waters.

The Louisiana Shipbuilding and Repair Association strongly supports the launch barge provision of Senate Bill S.1988 for the reasons we have stated. We ask you and the members of your committee to approve this legislation. We would be pleased to respond to any questions from you or members of your committee.

We would appreciate your committee taking the necessary and appropriate action to enact this proposed legislation in a most expeditious manner.

Sincerely,

T. F. Rinard
RADM, USN (Ret)
President

QUESTIONS OF SENATORS DANFORTH, PACKWOOD, AND STEVENS, AND THE ANSWERS OF MEBA

DO YOU BELIEVE THAT AN EXEMPTION SHOULD BE GRANTED FOR A LIMITED NUMBER OF FOREIGN-BUILT BUT U.S.-OWNED AND -CREWED VESSELS IF:

(1) Jones Act vessels are not exploiting a market for cabotage?

MEBA endorses the narrow exemption for large foreign-built launch barges as provided in S. 1988 inasmuch as there are no Jones Act-qualified vessels that can be used in this unique market. It should be noted that this exemption applies to unmanned launch barges, and, therefore, does not in any way impinge on U.S. seagoing employment. In our testimony, we urged consideration of compliance with the U.S. documentation laws that mandate 75 percent stock ownership by U.S. citizens in order to qualify for coastwise privileges. Although, as a practical matter, this recommendation may not be possible without causing further interminable obstacles for those in this business, it is a principle of law that MEBA would not wish to see eroded.

(2) There is no prospect of Jones Act vessels entering the trade so as to meet the demand for transport in that segment of the coastwise trade?

MEBA endorses the narrow exemption for foreign-built jumbo launch barges as provided in S. 1988 inasmuch as there is no prospect of Jones Act vessels entering the trade. The circumstances for this exemption, in our view, are unique. Authority had existed for the use of foreign-built barges, but that authority was later withdrawn owing to a subsequent reversal of Customs Service interpretation and ruling. Accordingly, this special case represents a grandfathering amendment to restore rights that were recognized and then withdrawn by government regulation. This sector of business -- OCS leasing and oil drilling -- is just starting to come out of the worst economic downturn in history. The Breaux launch barge exception will help, not hinder, U.S. interests with plans to increase exploration to the detriment of no one.

(3) Substantial economic loss results from the unavailability of vessels to transport the product in the coastwise trade?

MEBA endorses the narrow exemption for foreign-built jumbo launch barges as provided in S. 1988 because, without it, substantial economic loss would result from the unavailability of jumbo launch barges to transport platform jackets in the coastwise trade. One has to keep in mind that OCS leaseholders can function free of any Jones Act requirements now by using foreign, rather than American companies, engaged in the fabrication of platform jackets. This special corrective measure would preserve hundreds of U.S. fabrication jobs and insure that U.S. fabricators are not frozen out of the bidding process in the design, fabrication, and delivery of platform jackets.

(4) Alternate modes of transportation are not available to meet the logistical and economic needs of that market for timely delivery of a competitively priced product?

MEBA endorses the narrow exception called for in S. 1988 with respect to launch barges, in light of the fact that no alternate modes of transportation are available to meet the logistical and economic needs of this market. The only giant launch barges in existence worldwide -- twelve in all -- are foreign-built. Notwithstanding U.S. shipyard construction capabilities, no U.S. shipyards have plans underway or on the drawing boards to construct U.S. launch barges of the capacity needed. Moreover, no one has invested any capital and put it at risk based on Jones Act-qualified vessels being used. Were it not for the fact that Customs reversed itself, this issue would never have arisen and this provision would not be needed.

(5) The work and products in that segment of the economy are lost to foreign competition as a result of the above factors?

As stated above, the U.S. energy industry is just coming out of its worst economic period in history. It is reported that U.S. oil producers need to exercise some $5 billion worth of oil and gas leases in the Gulf of Mexico that will expire by 1990. This means a great deal of work, work that MEBA wants to see in American hands as much as possible. For the reasons stated earlier, with or without this exception, oil producers will proceed to exercise their leasing rights. U.S. fabricators having had the rug pulled out from under them by the Customs Service ruling will be the losers.

(6) Exempting a limited number of vessels to meet the market demand would likely result in more, rather than less, jobs in maritime related and other segments of the economy?

MEBA endorses this special exception because more, rather than less, jobs in maritime-related and other segments of the industry will result. It will, to be sure, preserve U.S. fabrication jobs; it will also help the hard-pressed U.S. steel industry. Seafaring jobs are not at issue as this exception applies to unmanned barges.

(7) The exempted vessels are precluded from competing with any future fully qualified Jones Act vessels that seek to engage in that trade?

As part of MEBA's statement for the record, we urged consideration of a provision that if, in the future, U.S.-built, large-size launch barges were constructed, that they have priority in this trade over the foreign-built ones. As matters now stand, S. 1988 would permit all OCS leaseholders to utilize any one of the twelve large launch barges in existence today -- vessels which are utilized on any given offshore project for just a few weeks out of the year. Although in our opinion such an eventuality is unlikely, we advocate this addition for the sake of consistency as we feel that any exceptions to the Jones Act -- no matter how worthy they might be -- should always be thought of as temporary in nature.